(17,307.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 219.

GEORGE H. EARLE, JR., RECEIVER OF THE CHESTNUT STREET NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

WILLIAM CONWAY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 17, 1899.

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1 To the honorable the Supreme Court of the United States:

The petition of George H. Earle, Jr., as receiver of the Chestnut Street National Bank, respectfully showeth that your petitioner brought an action into the supreme court of Pennsylvania for the eastern district of Pennsylvania to January term, 1898, No. 247, by writ of certiorari to an appeal from a judgment of the court of common pleas of Philadelphia county, No. 4, of December term, 1897, No. 626, in which action in said supreme court your petitioner was appellant and defendant (garnishee) in the said court of common pleas and William Conway was appellee in said supreme court and plaintiff in said court of common pleas.

That the said action in the said court of common pleas was one in which said plaintiff in said court of common pleas sued one John G. Schall in assumpsit, and in which, on February 24, 1898, a judgment was entered against said John G. Schall and damages assessed at $1,012.43; that said plaintiff in said court of common pleas afterward, on May 24, 1898, caused to be issued by said court of common pleas and returnable to it a writ of attachment surjudgment, and it was served upon said The Chestnut Street National Bank of Philadelphia (a banking association incorporated, organized, and transacting business under the act of Congress known as the "national bank act" and laws of the United States) at 9 a. m. on May 25, 1898, and upon said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, at 1.20 p. m. on May 24, 1898, as garnishees, commanding the said The Chestnut Street National Bank and the said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, to be and appear before said court of common pleas, at Philadelphia, on the first Monday of June, 1898, to show, if anything they, the said garnishees, have to say, why the said judgment against said John G. Schall, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishees; that afterward, on June 9, 1898, said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, garnishee aforesaid, entered his qualified appearance in said action in said court of common pleas for himself and said bank; that afterward, on the same day, a motion was made and filed (entered as a rule) by your petitioner to set aside the service of writ of attachment surjudgment and to vacate and dismiss all proceedings in attachment against him and the

2 said The Chestnut Street National Bank, garnishees, for want of jurisdiction of the said court of common pleas under section 5242 of the Revised Statutes of the United States, maintaining that all the proceedings in attachment had in said action in said court of common pleas against said The Chestnut Street National Bank and himself as receiver were and are null and void, and thereafter, on June 17, 1898, an affidavit of George H. Earle, Jr., was filed in said action, setting forth by affirmation that he had been duly appointed by the Comptroller of the Currency of the United States on January 29, 1898, and had duly qualified as receiver of said

bank, and that by said judgment of said common pleas court the motion or rule entered by said George H. Earle, Jr., as receiver of said The Chestnut Street National Bank, to vacate and dismiss the proceedings in attachment against said bank and himself as receiver in said action for want of jurisdiction of said common pleas court under section 5242 of the Revised Statutes of the United States was discharged, and that the judgment of said common pleas court discharging said rule was against the title, right, privilege, exemption, and exception specially set up and claimed under such statute of the United States by your petitioner, to his great damage.

That on the 30th day of January, 1899, the supreme court of Pennsylvania, sitting at Philadelphia, ordered said judgment of said court of common pleas to be affirmed, and afterward, on the 30th day of January, 1899, the said judgment was duly entered and recorded in the eastern district of Pennsylvania aforesaid upon the records of said supreme court.

That the said judgment of the supreme court of Pennsylvania is a judgment of the highest court of record of the State of Pennsylvania.

That the judgment of the said supreme court of Pennsylvania is final.

That the right, title, privilege, exemption, immunity, and exception claimed by your petitioner, defendant and garnishee and appellant aforesaid, was claimed upon his own behalf and for his own benefit under section 5242 of the Revised Statutes of the United States, in force at the time the writ of attachment complained of was issued against your petitioner and said bank by said court of common pleas of Philadelphia county, and the judgment of which court against your petitioner in this regard has been affirmed by said supreme court of Pennsylvania, as aforesaid. The said section 5242 of the Revised Statutes of the United States is in words as follows:

3 "SEC. 5242. All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void. No attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court."

That the decision and judgment of the supreme court of Pennsylvania aforesaid was against the right, title, privilege, immunity, exemption, and exception so claimed by and for the benefit and use of your petitioner.

That the said court of common pleas of Philadelphia and the supreme court of Pennsylvania have and had no jurisdiction over the subject-matter in controversy, but that the jurisdiction is by the said statute laws of the United States (section 5242, Revised Statutes) wholly forbidden and prohibited, and therefore the said proceedings and judgment aforesaid are null and void and contrary to the statute laws of the United States in the premises.

Your petitioner therefore prays for the allowance of a writ of error to the supreme court of Pennsylvania in order that the said judgment of the supreme court of Pennsylvania may be re-examined and reversed or affirmed in the Supreme Court of the United States.

And he will ever pray.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut Street National Bank.

4 STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

George H. Earle, Jr., being duly affirmed according to law, declares and says that he was appointed receiver of the said The Chestnut Street national bank on or about January 29, 1898, by the Comptroller of the Currency of the United States, and that the facts in the above petition stated are true to the best of his knowledge, information, and belief.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this sixth day of February, A. D. 1899.

[Seal of Wm. H. G. Gould, Notary Public, Philadelphia, Pa.]

WM. H. G. GOULD,
Notary Public.

I will accept service of citation to the Supreme Court of the U. S. in above case.

J. C. STILLWELL,
Att'y for Wm. Conway.

4½ [Endorsed:] In the Supreme Court of the United States. George H. Earle, Jr., as receiver of the Chestnut Street national bank, petitioner in error, *vs.* William Conway. Petition for writ of error. And now, to wit, this 8th day of February, 1899, citation awarded and writ of error allowed by me, George Shiras, Jr., associate justice of the Supreme Court of the United States. Asa W. Waters, W. H. Addicks, attorneys for petitioner.

5 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George H. Earle, Jr., receiver of the Chestnut Street national bank, appellant, and William Conway, appellee, No. 247, January term, 1898, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution
6 or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

7 *Copy of Citation.*

UNITED STATES OF AMERICA, *ss*:

To William Conway, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service of above citation, on February 9, 1899, is admitted and accepted.

J. C. STILLWELL,
Att'y for Wm. Conway.

8 *Bond Surwrit of Error to the Supreme Court of the United States.*

In the Supreme Court of Pennsylvania, Sitting at Philadelphia.

WILLIAM CONWAY, Appellee, *vs.* (JOHN G. SCHALL, Defendant, and) GEORGE H. Earle, Jr., as Receiver of the Chestnut Street National Bank, Garnishee, Appellant.	No. 247, January Term, 1898.

Know all men by these presents that we, George H. Earle, Jr., as receiver of the Chestnut Street national bank, and the Finance Company of Pennsylvania, are held and firmly bound unto William Conway in the full and just sum of twenty-five hundred (2,500) dollars, to be paid to the said William Conway, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we do bind ourselves, our successors and assigns and our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a court of common pleas, No. 4, in and for the county of Philadelphia, judgment was entered against
9 said George H. Earle, Jr., as receiver of the Chestnut Street national bank, at the suit of William Conway, of December

term, 1897, No. 626, which judgment was afterward affirmed by the supreme court of the State of Pennsylvania in a certain plea and suit in said court of January term, 1898, No. 247, and the said George H. Earle, Jr., as receiver of the Chestnut Street national bank, having obtained a writ of error to the Supreme Court of the United States to reverse the said judgment rendered in the last above-entitled action, and having filed a copy thereto in the office of the prothonotary of said court, and a citation directed to the said William Conway, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said George H. Earle, Jr., as receiver of the Chestnut Street national bank, appellant in said Supreme Court of the United States, shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGE H. EARLE, JR.,
As Receiver of the Chestnut St. National Bank. [SEAL.]
THE FINANCE CO. OF PENNSYLVANIA,
By C. WILLIAM FUNK, *Sec'y.* [SEAL.]

Sealed and delivered in the presence of—
SIMON A. STERN.

10 I approve of the above bond on behalf of William Conway.
J. C. STILLWELL,
Att'y for Wm. Conway.

The above bond approved this 8th day of February, 1899.
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Ct. of U. S.

Endorsement: 247, January term, 1898. William Conway *vs.* John G. Schall, The Chestnut Street National Bank, and George H. Earle, Jr., receiver of the Chestnut Street National Bank, garnishee, appellants. Bond surappeal to the Supreme Court of the United States. Filed Feb. 9, 1899, in supreme court of Penna, E. D.

Certificate.

I hereby certify that the above is a true and correct copy of the bond filed in above-entitled case.

In testimony whereof I have hereunto set my hand and the seal of said court, at Philadelphia, this ninth day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

11 In the Supreme Court of Pennsylvania, Eastern District.

Among the records and proceedings of the supreme court of Pennsylvania in and for the eastern district, *inter alia*, the following may be found as matter of file and of record:

Appearance Docket.

No. 247, January Term, 1898.

Docket Entries.

247.	William Conway, plaintiff, *vs.*	Appeal from the court of common pleas, No. 4, of the county of Philadelphia.
Asa W. Waters. W. H. Addicks.	John G. Schall, defendant; The Chestnut Street National Bank and George H. Earle, Jr., receiver of the Chestnut Street National Bank, garnishees.	Filed June 24, 1898.
		Eo die, certiorari exit, ret'ble the first Monday of January, 1899.
	Appeal of the garnishees.	July 6, 1898, record returned and filed.
	C. P., No. 626, Dec. term, 1897.	January 2, 1899, assignments of error filed.
		January 17, 1899, argued.
		12 January 30, 1899, judgment affirmed *per curiam* (S.).
		February 9, 1899, petition and copy of petition for writ of error to the Supreme Court of the United States brought into office.
		Eo die, writ of error, with copy of same, brought into office.
		Eo die, citation, with service, admitted and accepted by J. C. Stillwell, [Alfred D. Wiler,]* Esq., William Conway, att'y for [Commonwealth of Penna.,]* brought into office.
		Eo die, bond in $2,500 filed.

Correction made before signing of certificate.

CHAS. S. GREENE,
Prothonotary.

I hereby certify that the above and foregoing is a true and correct copy of the docket entries in the above-entitled case so full and entire as appears of record in our said supreme court.

In testimony whereof I have hereunto set my hand and seal of said court, at Philadelphia, this 9th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

[* Words enclosed in brackets erased in copy.]

Appeal and Affidavit.

In the Supreme Court of Pennsylvania, Eastern District.

WILLIAM CONWAY, Plaintiff, *vs.* JOHN G. SCHALL, Defendant, and The Chestnut Street National Bank and George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Garnishees.	Court of Common Pleas, No. 4, of the County of Philadelphia, December Term, 1897. No. 626.

Enter appeal on behalf of the Chestnut Street national bank and George H. Earle, Jr., receiver of the Chestnut Street national bank, from the order of the court of common pleas, No. 4, of the county of Philadelphia, discharging rule to set aside service of writ of attachment surjudgment, &c., entered June 20, 1898.

To Charles S. Greene, proth'y sup. ct.

COUNTY OF PHILADELPHIA, *ss:*

George H. Earle, Jr., being duly affirmed, saith that said appeal is not taken for the purpose of delay, but because appellants believe they have suffered injustice by the order from which they appeal.

GEORGE H. EARLE, JR.

Affirmed and subscribed this 23rd day June, A. D. 1898.

H. G. HART,
Notary Public.

[SEAL.]

14 Endorsement: No. 247, January term, 1898, supreme court of Pennsylvania, eastern district. William Conway *vs.* John G. Schall; Chestnut Street National Bank and George H. Earle, Jr., receiver, etc., garnishees, appellants. Appeal and affidavit. Filed Jun- 24, 1898, in supreme court. Asa W. Waters, W. H. Addicks.

Pracipe for Certiorari.

In the Supreme Court of Pennsylvania, Eastern District.

THE CHESTNUT STREET NATIONAL BANK and George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Appellants, *vs.* WILLIAM CONWAY.	Certiorari to the Court of Common Pleas, No. 4, of the County of Philadelphia, of December Term, 1897. No. 626.

Issue certiorari to the court of common pleas, No. 4, of the county of Philadelphia to bring up record and proceedings in a certain action in said court, No. 626, Dec. term, 1897, wherein William Conway is plaintiff and John G. Schall is defendant and The Chest-

nut Street National Bank and George H. Earle, Jr., receiver of the Chestnut Street national bank, are garnishees.

Returnable to next term, *sec. reg.*

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Appellants.

To Charles S. Greene, proth'y supreme court, sitting at Philadelphia.

15 Endorsement: No. 247, January term, 1898, supreme court of Pennsylvania, eastern district. William Conway *vs.* John G. Schall; Chestnut Street National Bank and George H. Earle, Jr., receivers, etc., garnishees, appellants. Præcipe for certiorari. Filed Jun- 24, 1898, in supreme court. Asa W. Waters, W. H. Addicks.

Exemplification.

PHILADELPHIA COUNTY, } *sct:*
State of Pennsylvania, }

Among the records and proceedings of the court of common pleas, No. four, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 626, December term, 1897, to wit:

Docket Entries.

December Term, 1897.

J. C. Stillwell.	William Conway *vs.* John G. Schall.	Sums. assumpsit exit Dec. 23, 1897.
626.		Ret. Mon., Jan'y, 1898, *nihil habet.*
	Dec. 23, 1897, statement of claim & rule to file aff't of defence filed.	Jan'y 7, 1898, als. sums. exit.
	Jan. 12, 1898, aff't of service of copy of statement & rule to file.	Ret. 3 Monday, Jan'y, 1898.
	Aff't of defence on Jan. 8, 1898, filed.	Served.
		Feb'y 24, 1898, judg't for want of an aff't of defence.
16 June 9, 1898, qualified appearance of A. W. Waters and W. H. Addicks for Geo. H. Earle, Jr., receiver, &c., garn., filed.	May 24, 1898, att. surjudg't *vs.* the Chestnut Street national bank and George H. Earle, Jr., receiver of the said Chestnut Street national bank, garnishee, exit.	*Eo die*, dams. ass'd a- $1,012.43.
	Ret. 1 Monday, June, 1898.	June 8, 1898, rule to set aside service of writ of attachment and to dismiss and vacate all proceedings in attachment.
	Att. as commanded and made known to garnishees, and *nihil habet* as to def't.	June, 20, 1898, rule discharged.
	June 17, 1898, aff. of Geo. H. Earle, Jr., filed.	June 8, 1898, rule to transfer to circuit court of the United States.
		June 13, 1898, rule withdrawn.
		June 24, 1898, certiorari from S. C., of Jan'y T., 1898, No. 247, bro't into office.
		Eo die, appeal bond of gar. filed.

Certified from the record this 27th day of June, A. D. 1898.

JOHN T. BURNS,
Pro Prothonotary.

[SEAL.]

WILLIAM CONWAY *vs.* JOHN G. SCHALL. } C. P., No. 4, Dec. Term, 1897. No. —.

Issue summons in assumpsit against the above-named defendant, returnable to the first Monday of January, 1898.

J. C. STILLWELL,
Att'y for Plaintiff.

Phila., Dec. 23, 1897.

To proth'y C. P. of Phila.

17 Endorsement: C. P., 4. 626, Dec. term, 1897. William Conway *vs.* John G. Schall. 315. Præcipe for summons in assumpsit. Filed Dec. 23, 1897. Hunter, pro proth'y. J. C. Stillwell.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon John G. Schall, late of your county, so that he be and appear before our judges at our [SEAL.] court of common pleas, No. 4, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of January next, there to answer William Conway of a plea of assumpsit; and *to* have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-seven (1897).

J. U. G. HUNTER,
Pro Prothonotary.

18 Endorsement: 626, Dec. term, 1897, court of common pleas, No. 4. William Conway *vs.* John G. Schall. Summons assumpsit. J. C. Stillwell. *Nihil habet.* So answers Harry P. Wildey, deputy sheriff. Alexander Crow, Jr., sheriff.

Statement of Claim.

WILLIAM CONWAY *vs.* JOHN G. SCHALL. } C. P., No. 4, December Term, 1897. No. —.

COUNTY OF PHILADELPHIA, *ss:*

The plaintiff, William Conway, claims of the defendant, John G. Schall, the sum of one thousand dollars, with interest thereon from the 20th day of December, A. D. 1897, and two dollars and six cents,

costs of protest, which sums are justly due and payable by the said defendant to the said plaintiff upon the cause of action whereof the following is a statement:

The defendant, to wit, on the 20th day of September, A. D. 1897, at the county aforesaid, made his promissory note in writing, of which note, with the endorsements now thereon, the following is a copy:

$1,000.00. PHILADELPHIA, *Sept.* 20, 1897.

Ninety days after date I promise to pay to the order of Turner & Kelly one thousand dollars at 4815 Cedar Ave., without defalcation, for value received.

JOHN J. SCHALL,
4815 *Cedar Ave.*

No. —. Due Dec. 20.

19 Upon which note are the following endorsements: "Turner & Kelly." "William Conway."

and delivered the said note to one Turner & Kelly, and the said Turner & Kelly then and there duly endorsed the same to the said plaintiff, whereof the defendant had notice.

The said promissory note was duly presented for payment at the said No. 4815 Cedar avenue, in the county aforesaid, and payment of the same duly demanded of a proper person, according to the tenor of the said note, but payment thereof was refused; whereupon the said note was duly protested for non-payment, for which the plaintiff was obliged to lay out and expend the sum of two dollars and six cents for costs of protest, and said defendant has always refused to pay the amount of the said note and costs of protest thereof or either thereof or any part thereof; wherefore the plaintiff brings this suit.

WILLIAM CONWAY.

COUNTY OF PHILADELPHIA, *ss:*

William Conway, the plaintiff above named, being duly sworn according to law, deposes and says that the facts set forth in the foregoing statement are true.

WILLIAM CONWAY.

Sworn and subscribed before me this 22nd day of December, A. D. 1897.

WILLIAM C. STOEVER,
[SEAL.] *Notary Public.*

20 Endorsement: December term, 1897. 626. C. P., No. 4. Conway *v.* Schall. Statement of claim. To the defendant within named: You are hereby notified that a rule has been entered upon you in the above case to file an affidavit of defense therein within fifteen days after the service of this notice upon you. Filed Dec. 23, 1897. Hunter, pro proth'y.

WILLIAM CONWAY
v.
JOHN G. SCHALL. } C. P., 4, Dec. Term, 1897. No. 690.

Issue als. summons in assumpsit in the above case, returnable to the third Monday of January, 1898.

J. C. STILLWELL,
Att'y for Pl'ff.

Jan. 7, 1898.

To proth'y C. P. of Phila.

Endorsement: C. P., 4. 626, Dec. term, 1897. William Conway *vs.* John G. Schall. Præcipe for als. sums. assumpsit. Filed Jan. 7, 1898. Hunter, pro proth'y. J. C. Stillwell.

Summons.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania —:

We command you, as before we did, that you summon
[SEAL.] John G. Schall, late of your county, so that he be and appear before our judges, at Philadelphia, at our court of common pleas, No. 4, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the third Monday
21 of January inst., there to answer William Conway of a plea of assumpsit; and *to* have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, 7th day of January, in the year of our Lord one thousand eight hundred and ninety-eight (1898).

J. U. G. HUNTER,
Pro Prothonotary.

Endorsement: 626, Dec. term, 1897, court of common pleas, No. 4. William Conway *vs.* John G. Schall. Summons assumpsit. J. C. Stillwell. Served John G. Schall by giving to him, January 8th, 1898, a true and attested copy of the within writ and making known to him the contents thereof. So answers Harry R. Wildey, deputy sheriff. Alexander Crow, Jr., sheriff.

WILLIAM CONWAY
vs.
JOHN G. SCHALL. } C. P., No. 4, Dec. Term, 1897. No. 690.

Jacob Myers, being duly sworn according to law, deposes and says that he served a copy of plaintiff's claim and rules to file an affidavit of defence in the above case on the defendant, John G. Schall, by giving to him, January 8th, a copy of statement and making known to him the contents thereof.

JACOB MYERS.

22 Sworn and subscribed to before me this 10th day of January, A. D. 1898.

—— ——.

Endorsement: 626, Dec. term, 1897, C. P., No. 4. William Conway *vs.* John G. Schall. Affidavit of service of statement. Filed Jan. 12, 1898. P. Hunter, pro proth'y. J. C. Stillwell.

WILLIAM CONWAY *vs.* JOHN G. SCHALL. } C. P., No. 4, December Term, 1897. No. 626.

And now, February 24th, 1898, on motion of J. C. Stillwell, attorney for plaintiff, judgment is entered against the defendant in the above suit by default for want of affidavit of defense, the prothonotary to assess damages.

Assessment of Damages.

Real debt	$1,002.06
Interest from December 20, 1897	10.37
	$1,012.43

Ten hundred and twelve dollars and forty-three cents.

I assess the damages as above.

CLAY,
Prothonotary.

23 Endorsement: 626, Dec., '97, C. P., No. 4. Wm. Conway *vs.* John G. Schall. Judgment and assessment of damages. R. V. Clay. J. C. Stillwell.

WILLIAM CONWAY *vs.* JOHN G. SCHALL. } C. P., No. 4, Dec. Term, 1897. No. 626.

Issue attachment execution in above case and summon the Chestnut Street national bank and George H. Earle, Jr., receiver of the said The Chestnut Street national bank, garnishees.
Returnable to the first Monday of June, 1898.
Real debt, $1,012.43
Int. from Feb. 24th, 1898.

J. C. STILLWELL,
Att'y for Pl'ff.

May 24, 1898.

To the proth'y C. P., Phila.

Endorsement: 626, Dec. T., 1897, C. P., No. 4. Conway *v.* Schall, def't, & Chest. St. N. bk. & G. H. Earle, receiver, & garnishees. Præcipe for att. execution. Filed May 24, 1898. Rains, pro proth'y. Stillwell.

Attachment Surjudgment.

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

24 We command you that you levy upon and attach the goods and chattels, stocks, moneys, and interests of and debts due to John G. Schall, defendant, in satisfaction of a certain judgment obtained in our court of common pleas, No. 4, of the county [SEAL.] of Philadelphia, at the suit of William Conway, plaintiff, against the said defendant, of Dec. term, 1897, No. 626, for the sum of one thousand and twelve dollars and forty-three cents, with interest from the 24th day of Feb'y, 1898, and costs.

And also that by honest and lawful men of your bailiwick you make known to the said defendant and to the Chestnut St. national bank and George H. Earle, Jr., receiver of the said The Chestnut Street national bank, and all other persons in whose hands or possession the said goods and chattels, stocks, moneys, interest, and debts or any of them may be attached as garnishees that they be and appear before our said court, at Philadelphia, on the first Monday of June next, to show, if anything they, the said defendant or the said garnishees, have to say, why the said judgment, besides costs of suit, should not be levied of the effects of the said defendant in the hands of the said garnishees; and have you then and there this writ.

Witness the Honorable Michael Arnold, president judge of our said court, at Philadelphia, the 24th day of May, in the year of 25 our Lord one thousand eight hundred and ninety-eight (1898).

SOLOMON RAINS,
Pro Prothonotary.

Attached as within commanded and made known to garnishee as follows, viz., George H. Earle, receiver, &c., by giving to him May 24th, 1898, at 1 o'clock and 20 minutes p. m., a true and attested copy of the within writ and making known to him the contents thereof, and the Chestnut Street national bank by *having* May 25th, 1898, at 9 o'clock a. m., a like copy at the dwelling-house of Isaac Cooper, vice-president of said bank, residing at 1819 Spring Garden street, with an adult member of his family, and *nihil habet* as to John G. Schall, defendant.

So answers—

JOHN J. CURLEY, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

Endorsement: 626, Dec. term, 1897, court of common pleas, No. 4. William Conway *vs.* John G. Schall, def't, and Chestnut St. Nat'l Bk. & Geo. H. Earle, Jr., receiver of Chestnut St. nat'l bk. Att. surjudgment.

Real debt	$1,012.43
Int. from 2, 24, '98	
Att'y, writ, &c.	7.25
Proth'y	3.37
Cr. and sat.	.25
Att. surjudgment	1.25

26 Costs on same:

Att'y, &c.	6.00
Proth'y	3.62
Gar. att'y	13.00

Stillwell.
Sheriff's office, May 24, 1898, 10.55 o'clock a. m.

In the Court of Common Pleas, No. 4, of Philadelphia County, State of Pennsylvania, December Term, 1897.

WILLIAM CONWAY, Plaintiff,
vs.
JOHN G. SCHALL, Defendant, and CHESTNUT STREET National Bank and George H. Earle, Jr., Receiver of the Chestnut St. National Bank, Garnishees. } No. 626.

Qualified Entry of Appearance.

To the prothonotary of said court.

SIR: Enter our appearance for George H. Earle, Jr., receiver of the Chestnut Street national bank, and Chestnut Street National Bank, defendants and garnishees in the above case, for the purpose only of moving said court to set aside the writ of summons in attachment surjudgment against him and them and to dismiss and vacate all proceedings in attachment therein against him or them.

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for George H. Earle, Jr., Receiver of the Chestnut
27 *Street National Bank, and Chestnut Street National Bank.*

Endorsement: No. 626, Dec. term, 1897, C. P., 4. William Conway, plaintiff, *vs.* John G. Schall, defendant, and Chestnut Street National Bank and George H. Earle, Jr., receiver of the Chestnut St. national bank, garnishees. Qualified entry of appearance. Filed June 9, 1898. C. H. W. W. H. Addicks. Asa W. Waters.

In the Court of Common Pleas, No. 4, of Philadelphia County, State of Pennsylvania, December Term, 1897.

WILLIAM CONWAY, Plaintiff,
vs.
JOHN G. SCHALL, Defendant, and THE CHESTNUT STREET National Bank and George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Garnishees. } No. 626.

Motion to Set Aside Service of Writ of Attachment Surjudgment and to Dismiss and Vacate All Proceedings in Attachment.

And now, to wit, this 6th day of June, 1898, the Chestnut Street National Bank of Philadelphia, Pennsylvania, by its receiver, duly appointed by the Comptroller of the Currency of the United States, George H. Earle, Jr., moves the court to set aside the service
28 of writ of attachment surjudgment and to dismiss and vacate all proceedings in attachment herein against him or said bank for the reason that the said court has not jurisdiction in such an action under section 5242 of the Revised Statutes of the United States.

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for the Receiver of the Chestnut Street National Bank and said Chestnut Street National Bank.

Endorsement: No. 626, Dec. T., 1897, C. P., 4. William Conway *vs.* John G. Schall, defendant, and Chestnut Street National Bank and George H. Earle, Jr., receiver of the Chestnut St. national bank, garnishee-. Motion to set aside service of writ of attachment surjudgment and to dismiss and vacate all proceedings in attachment. June 3, 1898. Rule to show cause granted. Ret. June 13, 1898. M. A. W. H. Addicks. Asa W. Waters. Filed June 9, 1898. C. H. W. A. W. W.

WILLIAM CONWAY, Plaintiff,
vs.
JOHN G. SCHAAL, Defendant, and THE CHESTnut Street National Bank and George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Garnishee-. } C. P., 4, Dec. T., 1897. No. 626.

29 *Affidavit*

COMMONWEALTH OF PENNSYLVANIA, *City and County of Philadelphia,* } *ss:*

Before me, the subscriber, a notary public in and for the county and State, personally appeared George H. Earle, Jr., who, being duly affirmed, deposes and says that prior to December 23rd, 1897, the Chestnut Street National Bank of Philadelphia, Pennsylvania, garnishee in the above-entitled action, was duly incorporated and

organized under the laws of the United States, and was transacting a banking business, and that on or about the said date it suspended payment of its obligations and became insolvent, and was so declared by the Comptroller of the Currency of the United States.

That thereafter, to wit, on or about the 29th day of January, 1898, this affiant was duly appointed by the Comptroller of the Currency of the United States, under the laws of the United States, receiver for the said Chestnut Street national bank, and as such, under the direction of the said Comptroller of the Currency, took and now holds possession of the books, records, and assets of every description of said banking association, and is now administering
30 the duties of such trust.

GEORGE H. EARLE, JR.

Affirmed and subscribed before me this seventeenth day of June, A. D. 1898.

H. G. HART,
Notary Public.

[SEAL.]

Endorsement: No. 626, Dec. T., 1897, C. P. 4. William Conway *vs.* John G. Schaal, defendant, and The Chestnut Street National Bank and George H. Earle, Jr., receiver of the Chestnut Street national bank, garnishees. Affidavit of George H. Earle, Jr. Filed Jun- 17, 1898. J. Briggs, pro proth'y. W. H. Addicks, Asa W. Waters.

EASTERN DISTRICT OF PENNSYLVANIA, } *ss:*
City and County of Philadelphia, }

[SEAL.] The Commonwealth of Pennsylvania to the justices of the court of common pleas, No. 4, for the county of Philadelphia, Greeting:

We, being willing for certain causes to be certified of the matter of the appeal of the Chestnut Street National Bank and George H. Earle, Jr., receiver of the Chestnut Street national bank, from the order of said court discharging rule to set aside service of writ of attachment surjudgment, &c., entered June 20, 1898, to No.
31 626, December term, 1897, wherein William Conway was plaintiff and John G. Schall was defendant and The Chestnut Street National Bank and George H. Earle, Jr., receiver of the Chestnut Street national bank, the said appellants, were garnishees, before you or some of you depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the justices of our supreme court of Pennsylvania, at a supreme court to be holden at Philadelphia, in and for the eastern district, the first Monday of January next, so full and entire as in our court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable James P. Sterrett, doctor of laws, chief

justice of our said supreme court, at Philadelphia, the 24th day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

CHAS. S. GREENE,
Prothonotary.

To the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the eastern district:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send, as
32 within we are commanded.

M. ARNOLD. [L. S.]
CHAS. Y. AUDENRIED. [L. S.]

Endorsement: 626, Dec. term, 1897, C. P., No. 4. No. 247, January term, 1898, supreme court. William Conway *vs.* John G. Schall, The Chestnut Street National Bank, *et al.*, garnishees, ap'ts. Certiorari to the court of common pleas, No. 4, for the county of Philadelphia, returnable the first Monday of January, 1899. Rule on the appellee to appear and plead on the return day of the writ. June 24, 1898, bro't into office. C. B. R. Filed Jul- 6, 1898, in supreme court. Asa W. Waters. W. H. Addicks.

Assignments of Error.

In the Supreme Court of Pennsylvania, Sitting at Philadelphia, January Term, 1898.

WILLIAM CONWAY, Appellee,
vs.
(JOHN G. SCHALL, Defendant, and) THE CHESTNUT STREET National Bank and George H. Earle, Jr., as Receiver of the Chestnut Street National Bank, Garnishees, Appellants. } No. 247.

Assignments of error upon behalf of appellants.

The appellant George H. Earle, Jr., as receiver of the Chestnut Street national bank, and upon behalf of said bank, against whom the writ of attachment surjudgment was issued and served in
33 the proceedings before the court below, assigns as an error of the learned court below its order discharging the appellants' rule (motion) "to set aside the service of writ of attachment surjudgment against him or said bank for the reason that the said court had not jurisdiction in such an action under section 5242 of the Revised Statutes of the United States."

ASA W. WATERS,
WILLIAM H. ADDICKS,
Attorneys for Appellants.

Endorsement: No. 247, January term, 1898. In the supreme court of Pennsylvania, sitting at Philadelphia. William Conway, appellee, *vs.* John G. Schall, defendant, and The Chestnut Street National Bank & George H. Earle, Jr., as receiver of the Chestnut Street national bank, garnishees, appellants. Assignments of error upon behalf of appellants. Filed Jan. 2. 1899, in supreme court. Asa W. Waters, W. H. Addicks, attorneys for appellants.

WILLIAM CONWAY
v.
CHESTNUT STREET NAT'L BANK *et al.*, Ap'ts.
} C. P., No. 4, Philadelphia. 247, January Term, 1898.

Filed Jan. 30, 1899.

Per curiam:

We find no error in this record of which the appellants have any just reason to complain.

Judgment affirmed.

STATE OF PENNSYLVANIA, *Eastern District*, } *ss:*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do hereby certify that the above and foregoing is a true copy of the opinion in the above-entitled cause so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Philadelphia, this 9th day of February, A. D. 1899.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE,
Prothonotary.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

UNITED STATES OF AMERICA, *State of Pennsylvania*, } *ss:*

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania, eastern district, do hereby certify that the foregoing record, pages 1 to 34, inclusive, is a true and faithful copy of the proceedings of the supreme court of the State of Pennsylvania, eastern district, in a certain suit therein pending, wherein The Chestnut Street National Bank and George H. Earle, Jr., receiver of
35 the Chestnut Street national bank, garnishees, were appellants and William Conway was appellee.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court of the State of Pennsylvania, eastern district, at Philadelphia, the 9th day of February, 1899, and in the one hundred and twenty-third year of the Independence of the United States.

Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.

CHAS. S. GREENE,
Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

36 I, James P. Sterrett, chief justice of the supreme court of Pennsylvania, do hereby certify that Charles S. Greene was at the time of signing the annexed attestation and now is prothonotary of the said supreme court of Pennsylvania in and for the eastern district, to whose acts as such full faith and credit are and ought to be given, and that the said attestation is in due form.

In witness whereof I have hereunto subscribed my name this ninth day of February, one thousand eight hundred and ninety-nine.

JAMES P. STERRETT,
Chief Justice Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

I, Charles S. Greene, prothonotary of the supreme court of Pennsylvania in and for the eastern district, do certify that the Honorable James P. Sterrett, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania, to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere, and that his signature thereto subscribed is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court of Pennsylvania in and for the eastern district, at Philadelphia, this ninth day of February, one thousand eight hundred and ninety-nine.

[Seal of the Supreme Court of Pennsylvania, Eastern District, 1776.]

CHAS. S. GREENE.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 9, '99. C. S. G.]

UNITED STATES OF AMERICA, *ss:*

To William Conway, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein George H. Earle, Jr., receiver of the Chestnut Street national bank,

is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United Sates, this 8th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

Service of above citation on February 9, 1899, is admitted and accepted.

J. C. STILLWELL,
Att'y for Wm. Conway.

Endorsed on cover: File No., 17,307. Pennsylvania supreme court. Term No., 219. George H. Earle, Jr., receiver of the Chestnut Street national bank, plaintiff in error, *vs.* William Conway. Filed February 20th, 1899.

No. 219. October Term, 1899.

Supreme Court U. S.
FILED
DEC 27 1899
JAMES H. McKENNEY,
Clerk.

Brief of Waters for P. C.

IN THE

Supreme Court of the United States.

Filed Dec. 27, 1899.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, of Philadelphia, Pennsylvania, Plaintiff in Error,

vs.

William Conway, Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

ASA W. WATERS,
W. H. ADDICKS,
Attorneys for Plaintiff in Error.

Allen, Lane & Scott, Prs., Phila.

No. 219. October Term, 1899.

IN THE

Supreme Court of the United States.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, of Philadelphia, Pennsylvania, Plaintiff in Error,

vs.

William Conway, Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF PLAINTIFF IN ERROR.

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I. A STATEMENT OF THE CASE.

The Chestnut Street National Bank of Philadelphia, Pa., failed on December 23d, 1897, and the Comptroller of the Currency of the United States, satisfied of its insolvency, appointed George H. Earle, Jr., Receiver, on January 29th, 1898, who immediately qualified and took possession of all its assets and ever since has been in possession thereof, and is administering the duties of his trust, under direction of said Comptroller. Section 5234, United States Revised Statutes. (Transcript, pages 16 and 17.) Afterwards on May 24th, 1898, attachment proceedings were instituted in mesne process against the bank in the Court of Common Pleas, No. 4, of Philadelphia County (No. 626, December Term, 1897), a court of the State of Pennsylvania.

William Conway, defendant in error in this court, is plaintiff in said State court, and sued one John G. Schall in an action in *assumpsit*, summons issuing on January 7th, 1898. (Transcript, page 12.) On February 24th, 1898, judgment was entered against John G. Schall for $1012.43. (Transcript, page 13.) On May 24th, 1898, plaintiff in State court (defendant in error) filed the following *præcipe*, viz.:—

" COMMON PLEAS, No. 4.

" *William Conway*
vs.
John G. Schall.

Dec. Term, 1897.
No. 626.

" Issue attachment execution in above case and summon
" the Chestnut Street National Bank and George H.
" Earle, Jr., Receiver of the said The Chestnut Street
" National Bank, garnishees.
" Returnable to the first Monday of June, 1898.
" Real debt, $1012.43.
" Int. from Feb. 24th, 1898.

" J. C. STILLWELL,
" *Att'y for Pl'ff.*

" MAY 24, 1898.
" To the proth'y C. P., Phila."
(Transcript, page 13.)

Attachment *sur* judgment (or attachment execution) issued from said Court of Common Pleas, returnable to it on the first Monday of June 1898, summoning by name the Chestnut Street National Bank and George H. Earle, Jr., Receiver of the said Chestnut Street National Bank, garnishees. The said writ of attachment *sur* judgment and the return thereof, as served, made by the Sheriff upon the plaintiff in error is set forth in the Transcript on pages 14 and 15. The plaintiff in error was served with the attachment on May 24th, 1898, at 1.20 P. M. On June 9th, 1898, plaintiff in error

filed a qualified entry of appearance in said case "for the "purpose only of moving said court to set aside the writ "of summons in atachment *sur* judgment," and "to dis- "miss and vacate all proceedings" in attachment against him or the bank. (Transcript, page 15.) On the same day a motion was filed by the plaintiff in error, granted as "a rule, to show cause," by the court returnable June 13th, 1898, "to set aside the service of writ of attachment *sur* judg- "ment and to dismiss and vacate all proceedings in attach- "ment herein against him or the said bank for the reason that "the said court has not jurisdiction in such an action under "Section 5242 of the Revised Statutes of the United States" (Transcript, page 16), and in support of the motion and his entry of appearance qualified as aforesaid, plaintiff in error filed on June 17th, 1898, an affidavit setting forth the facts that the Chestnut Street National Bank of Philadelphia, Pa., garnishee in the above action, was duly incorporated and organized under the laws of the United States and was declared insolvent by the Comptroller of the Currency of the United States on December 23d, 1897, and that on January 29th, 1898, the affiant was duly appointed by the Comptroller under the laws of the United States, Receiver for said insolvent bank, and as such Receiver, under the direction of said Comptroller, had taken and then held possession of all the assets of the bank, and was administering upon the duties of such trust. (Transcript, pages 16, 17.)

On June 20th, 1898, the rule granted by the court to show cause why the writ of attachment and all the proceedings thereunder should not be dismissed and vacated, came on to be heard, and upon argument the rule was discharged. (Transcript page 9.) Thereupon, the Receiver of said bank (plaintiff in error), on June 24th, 1898, by direction of the Comptroller of the Currency, appealed from the judgment of said Court of Common Pleas, No. 4, of Philadelphia County, to the Supreme Court of the State of Pennsylvania, sitting in and for the Eastern District at Philadelphia, and the cause was certified upon appeal to said Supreme Court on June 24th, 1898, and rule entered upon the appellee, William Conway,

to appear and plead on the return day of the writ in said Supreme Court, to wit, the first Monday in January, 1899, (Transcript, pages 17 and 18), assignments of error were filed in said Supreme Court of Pennsylvania alleging want of jurisdiction of said Common Pleas Court in proceedings in attachment, for the reason aforesaid. (Transcript, pages 18 and 19.) The case came on to be heard in the said Supreme Court of Pennsylvania, and on January 30th, 1899, the judgment of said Common Pleas Court discharging the rule, as aforesaid, on June 20th, 1898, was affirmed and so entered upon the records of the court, and there was filed on the same day an opinion in the case, as follows:

"SUPREME COURT OF PENNSYLVANIA.

"*William Conway* vs. "*Chestnut Street National Bank* "et al., *Appellants.*	January Term, 1898. No. 247.

"Filed January 30th, 1899.

"*Per curiam:*

"We find no error in this record of which the appel-
"lants have any just reason to complain.

"Judgment affirmed.

The case is reported in 189 Pa. St., page 610.

From this final judgment of the Supreme Court of Pennsylvania, the highest court of record of said State, the case comes into this court upon writ of error caused to be issued by the Receiver of said bank (plaintiff in error), by direction of the Comptroller of the Currency of the United States. (Transcript, pages 1 to 8, inclusive, 19, 20, and 21.)

The only questions raised in the case are as to the jurisdiction of the Court of Common Pleas, of Philadelphia County, a court of the State of Pennsylvania, to issue attachment in mesne process against an insolvent national bank, organized and incorporated under the National Bank Act and laws of the United States, a Receiver thereof having been duly appointed by the Comptroller of the Currency, who has qualified and taken possession of all assets of said insolvent bank, and is administering upon them under the laws of the United States, as an officer of the United States, particularly relying upon the portion of section 5242, United States Revised Statutes, which says:—

> "No attachment, injunction, or execution shall be is-
> "sued against such association, or its property, be-
> "fore final judgment in any suit, action, or proceeding
> "in any State, county, or municipal court."

Questions Involved and the Manner in which they are Raised.

1. The State court had jurisdiction of Schall, acquired by service of its writ of summons in *assumpsit*. The judgment against Schall is valid, and upon it the State court had jurisdiction of any other garnishee than a National bank by issuance and service (as in the case at bar) of a writ of *attachment* sur *judgment* returnable to it, but the issuing and serving of such a writ against a National banking association (as was done here) or its property is powerless, utterly null and void, and confers no jurisdiction because Congress—the supreme law-making power of the land as to National banks—has deemed it prudent to exempt them and their property from all mesne process by *attachment, injunction, or execution*, and has forbidden "any State, county or municipal court" from issuing such mesne process "in any suit, action, or proceeding." (*a.*) It is immaterial whether the legislation of Congress upon this subject be regarded as wise or otherwise, its power to so legislate is unquestioned, and this court has already construed this United States Statute (section 5242) now under consider-

ation, as we understand it, in favor of our contention in *Pacific National Bank* vs. *Mixter*, 124 U. S., 721.

(*b.*) The case at bar differs from the case No. 218 on the docket of this court, in which the Receiver of the same bank is plaintiff in error, in its facts, in that the attachment *sur* judgment was not issued and served until after the appointment of the Receiver, whereas in the other case the attachment proceedings were pending against the bank when the Receiver was appointed, and in this case the Receiver entered his appearance only for the purpose of moving the vacation and dismissal of the attachment proceedings; and the case comes to this court simply upon the question, whether or not the State court had jurisdiction under section 5242 of the Revised Statutes of the United States to commence a suit, action or proceeding by writ of attachment, injunction or execution in mesne process against the Receiver of an insolvent National bank.

(*c.*) The Common Pleas Court, No. 4, of Philadelphia County, in the State of Pennsylvania, had on May 21st, 1898, filed an opinion in the case now before this court, No. 218, October Term, 1899, in favor of its jurisdiction by attachment proceedings in mesne process against a National bank, and owing to that opinion of the court, attachments *sur* judgment were issued in a number of cases pending in the State courts against the Receiver, which are awaiting the decision of this court in the case at bar, as well as in the case before mentioned.

(*d.*) It is contended by the learned counsel for the defendant in error that while section 5242 aforesaid prohibited an attachment, injunction, or execution against a National bank before final judgment, the attachment referred to in that section is not such an attachment proceedings as we have here, where, it is claimed, the attachment is not against the bank, but againt the defendant Schall; that the property seized is not the property of the bank, but the property of Schall. In both of these propositions, we think, the learned counsel is wrong, and that the learned court in sustaining these propositions is in error. The proceeding by attachment execution, as in this

case, is the commencement of a new suit by the defendant, against whom judgment has been taken, at the instance of and for the use of the judgment creditor (defendant in error), against the plaintiff in error by a writ requiring him to appear in court and answer, and at the same time seizing by notice all the credits, effects, and property in his hands claimed to belong to the said defendant (the judgment debtor.) If the action had been one in *assumpsit* by the judgment debtor against the Receiver, the court would have had jurisdiction, but when the action is begun by issuing a writ of attachment (a seizure) garnishing the Receiver of an insolvent National bank, tying up the assets of the bank before a final judgment against it, the court, under section 5242, we claim could acquire no jurisdiction whatever, by such proceedings.

II. A SPECIFICATION OF ERRORS RELIED UPON.

1. It was error of the Pennsylvania Supreme Court to affirm the judgment of the lower court against the plaintiff in error, entered on June 20th, 1898, discharging the rule upon behalf of the bank, filed by plaintiff in error, "to vacate and "dismiss the attachment" (the bank then being in the hands of a Receiver appointed by the Comptroller of the Currency), for the reason that said State courts had not jurisdiction of the remedy by writ of attachment, injunction, or execution against the bank or against any National banking association, or its property in mesne process under section 5242 of the United States Revised Statutes.

2. It was error of the Pennsylvania Supreme Court not to have reversed the judgment of the lower court, and not to have ordered it to vacate and dismiss all attachment proceedings, and to set aside all findings and judgments based thereon against plaintiff in error or the bank, because utterly null and void for want of jurisdiction in said courts, under the laws of the United States, more particularly section 5242 of the Revised Statutes.

3. It was error of the Pennsylvania Supreme Court not to have reversed the judgment of the lower court, and not to have ordered the attachment proceedings vacated and dismissed, for the reason that the issuance and service, returnable to said lower court of a writ of attachment *sur* judgment (or attachment execution), under the statutory laws of that State, against the Receiver of an insolvent National banking association or its property before final judgment against it, is in conflict with that portion of section 5242, United States Revised Statutes, which says, "No attachment, injunction, or "execution shall be issued * * * in any suit, action, or "proceeding, in any State, county, or municipal court" against such association in *mesne* process.

4. It was error of the Pennsylvania Supreme Court not to have reversed the judgment entered by the lower court, on June 20th, 1898, discharging the rule of plaintiff in error moving to vacate and dismiss all proceedings in attachment for want of jurisdiction in the lower court, and not to have ordered the vacation and dismissal of the attachment proceedings, for the reasons that the bank, on December 23d, 1897, became insolvent, and a Receiver under section 5234 United States Revised Statutes, on January 29th, 1898, had been appointed by the Comptroller of the Currency of the United States, who—qualifying—had taken and held possession of the books, records, and assets of every description of said banking association, as such Receiver, and as an officer of the United States, under the direction of the Comptroller of the Currency before the issuance and service of the writ of attachment on May 24th, 1898, and was then, and is now, administering the duties of that trust, all of which appears of record herein. The plaintiff in error, having entered his appearance in such action for the purpose only of filing the motion or rule to vacate and dismiss the attachment for want of jurisdiction in the court for reasons therein stated. We call attention, more in detail, in this connection to the following points of error:—

(*a.*) The Receiver of an insolvent National bank is under the sole direction of the Comptroller of the Currency of the United States (section 5234, United States Revised Statutes). No power lies in any court or in any other person to direct the administration of his trust.

(*b.*) The Receiver of an insolvent National bank is required "to pay over all moneys to the Treasurer of the United "States, subject to the order of the Comptroller, and make "report to the Comptroller of all his acts and proceedings" (section 5234, United States Revised Statutes), and it would be in violation of this statute for plaintiff in error to pay over moneys upon the judgment or order of the lower court of the State of Pennsylvania in attachment in mesne process or otherwise.

(*c.*) Only after "full provision first made for refunding to "the United States any deficiency in redeeming the notes" of an insolvent National bank is the Comptroller authorized to make a ratable dividend of the money so paid over to him by the Receiver (section 5236, United States Revised Statutes), and it would violate this statute if plaintiff in error undertook to pay a dividend upon the judgment or order of the Pennsylvania State court for the collection of which, upon his refusal, an execution is ordered.

(*d.*) All claims against a Receiver of an insolvent National bank must first be either "proved to the satisfaction of the "Comptroller or adjudicated in a court of competent jurisdic-"tion." (1.) No claim has been proved to the satisfaction of the Comptroller. (2.) No claim has been adjudicated in a court of competent jurisdiction because the lower court could not acquire jurisdiction by attachment in mesne process. (Sections 5236 and 5242, United States Revised Statutes.)

(*e.*) If the power lies in the State courts of Pennsylvania to so command, by attachment in mesne process, Receivers of National banks as to prevent the application of their assets in

the manner prescribed by the National Bank Act, the power is not limited to an execution for a ratable dividend upon the sum adjudged due; it extends to a full payment, violating that portion of section 5242, United States Revised Statutes, which says:—

> "All payments of money to either (shareholders or "creditors of a National bank) made after the commission "of an act of insolvency, or in contemplation thereof, "made with a view to prevent the application of its assets "in the manner prescribed by this chapter, or with a view "to the preference of one creditor to another, except in "payment of its circulating notes, shall be utterly null "and void."

(*f.*) If Schall has title and ownership to any specific property in the hands of plaintiff in error, or of any Receiver of a National bank, if necessary, he can have recourse to a writ of replevin for its recovery, but not to a writ of attachment, injunction, or execution in mesne process.

(*g.*) The proceedings in issue in the case at bar have no element in them of an action in *replevin.*

(*h.*) Garnishing, by writ of attachment in *mesne* process in a State court, the Receiver of an insolvent national bank or its property creates a preference for one creditor of the bank over another, and is forbidden and directly prohibited by Section 5242 of the Revised Statutes of the United States.

III. A BRIEF OF THE ARGUMENT.

1. This court has jurisdiction to review upon writ of error a judgment of the highest court of a State when based upon proceedings under laws of the State that are claimed to be in conflict with the laws of the United States.

> Farmers and Mechanics' National Bank *vs.* Dearing (decided October, 1875), 91 U. S., 29.
>
> California Bank *vs.* Kennedy (decided May 24th, 1897), 167 U. S., 362.

2. The constitutionality of the National Bank Act has been judicially determined, and the supremacy of Congressional over State legislation in matters of National banks is not here disputed.

Davis *vs.* Elmira Savings Bank (decided March 2d, 1896), 161 U. S., 275.

3. In the case at bar attachment was issued, against the Receiver of a National bank as garnishee under a State law, in a State court, by a judgment creditor—in an action in which the bank became a party as garnishee only subsequent to the judgment. The bank failed December 23d, 1897, the U. S. Comptroller of the Currency appointed a Receiver on January 29th, 1898. The Receiver, who was garnished on May 24th, 1898, moved to vacate and dismiss the attachment for want of jurisdiction of the court on June 8th, 1898, and on June 20th, 1898, judgment was entered by the State court against the Receiver, discharging the rule, "to dismiss and vacate."

The Receiver, before judgment, during pendency of the attachment, had entered his appearance in the case for the purpose only of moving the dismissal of the proceedings and entered a suggestion of record as to his appointment as Receiver, and as to his taking and holding possession as such, of all the assets of the bank—thereby substituting himself as garnishee upon behalf of the bank for the purpose of moving "to vacate and dismiss the attachment"—nevertheless in face of the prohibition contained in section 5242, U. S. Rev. Stat., which reads:—

> "No attachment, injunction, or execution shall be "issued against such association or its property be- "fore final judgment in any suit, action, or proceed- "ing in any State, county, or municipal court."

the rule "to dismiss and vacate" is discharged.

4. That the portion of section 5242 just quoted prohibits "State, county, or municipal courts" from issuing an "attachment, injunction, or execution" in *mesne* proc-

ess "in any suit, action, or proceeding" against National banks, is conceded, as we understand it, both by the defendant in error and by the State courts of Pennsylvania.

The attachment, however, it says, must be limited to a debt due by the insolvent National bank in contradistinction from one due by a judgment debtor, and to a direct suit aganist the Receiver, such, for instance, as a "foreign attachment" as defined in the laws of Pennsylvania. It is contended by the defendant in error, moreover, that the particular attachment in the case at bar is not an attachment within the meaning of the prohibition, but is entirely without it. That it really is not an attachment against the bank at all, but simply an attachment against the judgment debtor, and so states on the face of the writ, and that the proceeding, so far as the bank is concerned, is only a warning served upon it, and the bringing it into court, to there inquire and determine whether or not it has in its possession property of the judgment debtor, subject to levy and execution; that while the laws of Pennsylvania name the writ "attachment execution," and upon its face it is called "attachment *sur* judgment," it is nothing more or less than "garnishment," and that "garnishment" is not within the meaning of the prohibition.

In our endeavor to reach a true construction of the portion of section 5242 under immediate discussion in its bearing upon the case at bar, we present our views somewhat in detail under the following headings:—

(*a.*) The construction of section 5242, as given by the courts.

(*b.*) The sections of the Revised Statutes of United States particularly relied upon and the attachment laws of Pennsylvania providing for "attachment execution."

(*c.*) What is garnishment?

In Pacific National Bank *vs.* Mixter (decided February 20th, 1888), 124 U. S., 721. A National Bank Examiner

was in charge of an embarrassed National Bank from November 20th, 1881, until March 18th, 1882, when the Comptroller permitted it to open its doors for business. On March 24th, 1882, creditors of the bank commenced suits, issuing orders of attachment with the original writs, as could be done under the laws of Massachusetts, and attaching deposits to the credit of the bank in two other banks of the same city. This action was brought in the United States Circuit Court. Before the issues were determined, the bank a second time closed its doors, and on May 22nd, 1882, the Comptroller appointed a Receiver. Before this, however, at once upon the commencement of the action, the bank secured a dissolution of the attachments, by giving bonds for which the laws of the State provided and it put up securities to secure the surety on the bonds from liability. The Receiver entered his appearance in the actions, filed answers upon behalf of the bank, and moved the discharge of the attachments and dismissal of the actions. His motions were all overruled and judgments entered against the bank. Thereupon he came to this court upon writs of error.

Not resting with these acts the Receiver, failing in his motions and defenses at law, filed a bill in equity in the same court against the attaching creditors, and the sureties on the bonds given to dissolve the attachments with the object of reducing to possession the securities held for protection against liability by the sureties, and to restrain the attaching creditors from enforcing the attachment bonds on the ground "that the attachments made in said actions were unauthorized, illegal, and void."

This bill in equity was dismissed by the Circuit Court (22 Fed. Rep., 694), and came upon appeal to this court.

The substantial facts in these cases are found to be the same as the facts in the case at bar, when carefully analyzed, and the principles of law governing them are equally applicable to this case.

1. The creditors attach in *mesne* process the deposits belonging to the defendant bank, the deposits happening to

be in two other banks at the time, but it matters not whether in the vaults of other banks or its own, the deposits belonged to the defendant bank.

2. In the case at bar, Schall, from a legal standpoint, is the attaching creditor to the use of the defendant in error—his judgment creditor—and sues the Receiver for an adjudication of his alleged claim, summoning the Receiver by a writ of attachment in *mesne* process garnishing the assets of the bank itself by serving a writ of attachment execution upon the Receiver.

3. The difference between Mixter's case and the one at bar is in form, but not in substance. Mixter, at the inception of the suit, having then a claim against the bank, under the laws of Massachusetts, sought (1) a personal judgment, (2) attached the assets of the bank to await a determination of the suit; whereas the defendant in error in the case at bar, at the inception of its suit aganist Schall under the laws of Pennsylvania, having no claim against the bank, which had then been declared insolvent and had closed its doors, simply sought a personal judgment against Schall and the bank was not in any way a party to the action, it had no day in court in that proceeding whatever, when personal judgment was obtained against Schall, then by the attachment-execution proceeding, and issuance and service of the attachment *sur* judgment against the Receiver, Schall, to the use of the defendant in error commences for the first time an action against the bank, for an adjudication of his claim, but commences it by an attachment in *mesne* process, garnishment, seizure by notice to the Receiver, restraining payment of the alleged indebtedness of the bank to Schall, pending the proceedings. This *mesne* process is forbidden by section 5242, and the court acquired no jurisdiction of the bank or Receiver by the issue and service of that writ. The proceeding was not only voidable, but utterly null and void, just as the attachments in *mesne* process of Mixter in the Massachusetts case were declared null

and void. In the Mixter case the original writ issued was of a twofold character, the bank was served as a defendant *in personam,* and at the same time attached *in rem,* before judgment was entered against it. The attachment in the Mixter case is vacated and dismissed by the decision of this court and the attachment proceedings are declared so utterly null and void, that the bonds given for dissolution of the attachments are declared also utterly null and void, but the adjudication of the claim by the judgment *in personam* remains, and of this the court had jurisdiction because acquired independently of the attachment, and upon this adjudicated claim the Comptroller, under section 5236, is authorized to pay dividends from the assets in the hands of the Receiver.

In the case at bar, the jurisdiction of the court in the suit of Schall to the use of the defendant in error, over the bank (plaintiff in error) is entirely dependent upon the validity of the issuance and service of the writ of attachment execution against the bank in *mesne* process. It is conceded that the jurisdiction is acquired only by this writ of attachment *sur* judgment; the court therefore had no jurisdiction and its judgment of June 20th, 1898, discharging the rule to dismiss is error.

The Mixter case was in the United States Circuit Court, but this court holds that court had no jurisdiction, for the reason, stated in its opinion on pages 726, 727 of report, viz.:—

> "The prohibition does not in express terms refer to "attachments in suits begun in the Circuit Courts of "the United States, but as by section 915 of the Re- "vised Statutes those courts are not authorized to "issue attachments in common law causes against the "property of a defendant, except as 'provided by the " 'laws of the State in which such court is held for the " 'courts thereof.' It follows that, as by the Amend- "atory Act of 1873, now part of section 5242 of the "Revised Statutes, all power of issuing attachments "against National banks before judgment, has been

"eliminated from State Statutes, there cannot be any "laws of the State providing for such a remedy on "which the Circuit Court may act. The law in this "respect stands precisely as it would if there were no "State law providing for such a remedy in any case. "It was suggested in argument that the prohibition "extended only to the use of the remedy by State "courts, and that the remedy itself still remained "to be resorted to in the courts of the United States. "But we do not so understand the law. In our "opinion the affect of the Act of Congress is to deny "the State remedy altogether, so far as suits against "National banks are concerned, and in this way oper- "ates as well on the courts of the United States as on "those of the States, although the provision was evi- "dently made to secure equality among the general "creditors in the division of the proceeds of the prop- "erty of an insolvent bank, its operation is by no "means confined to cases of actual or contemplated "insolvency. The remedy is taken away altogether "and cannot be used under any circumstances. It "was further said that if the power of issuing at- "tachments has been taken away from the State courts, "so also is the power of issuing injunctions. That "is true."

The opinion throughout is directly pertinent to the case at bar. We quote again from page 726 of report:—

"The fact that the amendment of 1873, in relation "to attachments and injunctions in State courts, was "made a part of section 5242 shows the opinion of "the revisers and of Congress that it was germane to "the other provision incorporated in that section, and "was intended as an aid to the enforcement of the "principle of equality among the creditors of an in- "solvent bank. But, however that may be, it is clear "to our minds that, as it stood originally as a part of "section 57, after 1873, and as it now stands in the

"Revised Statutes, it operates as a prohibition upon "all attachments against National banks under the "authority of the State courts. That was evidently "its purpose when first enacted, for then it was part "of a section which, while providing for suits in the "courts of the United States, or of a State, as the "plaintiff might elect, declared in express terms that "if the suit was begun in a State court no attach- "ment should issue until after judgment. The form "of its re-enactment in the Revised Statutes does not "change its meaning in this particular. It stands now, "as it did originally, as the paramount law of the "land that attachments shall not issue from State "courts against National banks, and writes into all "State attachment laws an exception in favor of Na- "tional banks. Since the Act of 1873 all the attach- "ment laws of the States must be read as if they "contained a provision in express terms that they were "not to apply to suits against a National bank."

In National Bank *vs.* Colby (decided by this court at October Term, 1874), 21 Wall., 609, it is held:—

"1. The property of a National bank organized un- "der the Act of Congress of June 3d, 1864, attached "at the suit of an individual creditor after the bank "has become insolvent, cannot be subjected to sale "for the payment of his demand, against the claim "for the property by a Receiver of the bank subse- "quently appointed."

In the case of C. Cadle, Jr., Receiver of the First National Bank of Selma, *vs.* Buford A. Tracy et al., in equity (decided by the United States Circuit Court for the Southern District of New York, April 23d, 1873), 11 Blatch., 101, *held,* Blatchford, J., rendering the opinion of the court:—

"T., a resident of Kentucky, and a creditor of a Na- "tional bank incorporated under the Act of Congress

"of June 3d, 1864 (13 U. S. Stat. at Large, 99), and "located in Alabama, brought a suit against it in the "Supreme Court of New York, to recover a debt al- "leged to be due from the bank to him, and in such "suit attached certain moneys in the possession of a "National bank in New York, as the property of the "Alabama bank. The suit was commenced by at- "tachment and publication of the summons. C., who "was appointed Receiver of the Alabama bank, under "the provisions of the said Act, was, on his own ap- "plication, substituted as defendant in such suit, in "place of the Alabama bank, with the like force and "effect as if the suit were continued in the name of "said bank, and thereupon put in an answer therein, "setting up a want of jurisdiction in the State court "over him, as an officer, or over the bank, or over "the subject of the action, and other defenses. The "suit was tried, and a judgment was rendered that "T. recover of C., as Receiver of the bank, a certain "sum, 'to be levied and collected of the moneys and " 'property whereon an attachment has been heretofore " 'levied in this action.' Afterwards, C. filed a bill in "equity in this court against T. and the New York "bank, praying for an injunction against T. from pro- "ceeding further on his attachment, or on any judg- "ment in the suit in which such attachment was is- "sued, and for the payment to him, C., of the moneys "in the hands of the New York bank. The Code of "Procedure of New York (section 227) provides "that in an action arising on contract, for the recovery "of money only, 'against a corporation created by, or " 'under the laws of, any other State, government, or " 'country,' the plaintiff, at the time of issuing the "summons, or at any time afterwards, may have the "property of such corporation attached, in the man- "ner thereinafter prescribed, as a security for the sat- "isfaction of such judgment as the plaintiff may re- "cover. The same Code (section 427) provides that "an action 'against a corporation created by, or under

"'the laws of, any other State, government, or "'country,' may be brought in the Supreme Court of "New York by a plaintiff not a resident of the State "of New York, 'when the cause of action shall have "'arisen, or the subject of the action shall be situated, "'within the State.' The bill proceeded on the "ground that the State court had no jurisdiction of "the suit against the Alabama bank, because it could "not acquire jurisdiction *in invitum* of a suit against "a corporation created under said Act, and also be- "cause the cause of action in such suit did not arise "within the State of New York, *held*:—

"(1.) That, so far as the provision of section 427 "of the Code of New York was concerned, the Su- "preme Court of New York had jurisdiction over "the suit.

"(2.) That the effect of the provisions of the fifty- "seventh section of the said Act of June 2d, 1864, "was to deprive the State court of jurisdiction over "the suit.

"(3.) That C. was not estopped by the proceed- "ings in the suit in the State court from questioning "the jurisdiction of that court over him, or its jur- "isdiction to render against him the judgment which "it did render.

"(4.) That C. was entitled to the relief prayed "for.

"A National bank incorporated under said Act can "be sued only in the courts designated in the fifty- "seventh section thereof.

"Whether the cause of action in the said suit arose "in New York *quære*.

"In the case of a corporation aggregate, no waiver "of an objection to jurisdiction can be produced, by "the fact that the corporation appears and pleads by "attorney."

In the case of Garner *vs.* Second National Bank of Providence *et al.*, decided by Judge Lacombe, of the

United States Circuit Court for the Southern District of New York, March 12th, 1895, 66 Fed. Rep., 369:—

"The plaintiff, a resident of New York, brought an "action in State court against defendant National "bank and individuals, all resident of Rhode Island. "A warrant of attachment was taken out against the "property of all three defendants, and certain moneys "of the defendant bank were attached in the hands "of the Fourth National Bank of the city of New "York. The usual order of publication was served "with the summons, January 7th and 8th, in the State "of Rhode Island. The defendant National Bank "filed its petition and bond for removal to the United "States Circuit Court, and after reviewing the ques- "tions arising upon the petition for removal, the court "sustained the application for removal, and says, on "page 379:—

" 'The case being properly removed, it only " 'remains to determine the motion to vacate " 'the attachment and service of summons. The " 'statutes of the United States expressly pro- " 'hibit the issuing of an attachment against a " 'National bank or its property before final " 'judgment in any State court. The Revised " 'Statutes United States, section 5242.

" 'Bank *vs.* Mixter, 124 U. S., 721, 8 Su- " 'preme Ct., 718.

" 'The attachment was, therefore, improperly " 'issued, and should be vacated, and inasmuch " 'as the summons was personally served out of " 'the State, such service should be set aside and " 'declared void. Motion granted.' "

In *New York* there are several decisions construing this statute. *Southwick* vs. *Bank* (decided by the Supreme Court of New York, at March Term, 1876), *7 Hun., 96*, holding that:—

"The amendment to the National Banking Act, "passed in 1873 (chapter CCLXIX., section 2), pro- "viding 'that no attachment, injunction, or execu- " 'tion shall be issued against such association or " 'its property before final judgment in any such suit, " 'action, or proceeding in any State, county, or mu- " 'nicipal court' relates only to suits, actions, or pro- "ceedings against associations located where the suit "is brought, and not to cases where the action is "against a non-resident corporation,"

was directly overruled by that court in *Rhoner* vs. *Bank*, decided at April Term, 1878, *14 Hun., 126*, saying that:—

"An attachment cannot be issued against a Na- "tional bank before final judgment, even though it "has property within this State, and is located and "carries on business in another State. (Southwick "*vs.* First National Bank of Memphis, 7 Hunn., 96. "Overruled.)"

And the same court (Supreme Court of New York), in *The Central National Bank* vs. *The Richland National Bank of Mansfield*, decided November, 1876, 52 Howard's Practice, 136, held that:—

"An attachment cannot be issued against a Na- "tional bank or its property before final judgment in "any suit, action, or proceeding in any State, county, "or municipal court. The issuing of an attachment "against these institutions or their property is strictly "prohibited by Congress, and it is only where juris- "diction cannot be acquired without resort to attach- "ment that the power of Congress to inhibit, or "rather to postpone the use until final judgment of "such provisional remedy seems to be at all ques- "tionable.

"This prohibition does not in any manner inter- "fere with the general jurisdiction of State courts

"over National banks; it does not take away the "jurisdiction over such foreign corporations having "property within this State; that jurisdiction is not "acquired by virtue of provisions of the code proced- "ure relating to this particular provisional remedy. "The jurisdiction is acquired by the service of the "summons, and that is effected by the provisions of "section 134 of the Code, or where personal service "cannot be had upon an officer, then it may be had "by publication under the provisions of section 135."

In *William H. Robinson*, respondent, *vs. The National Bank of Newberne*, appellant (decided by the Court of Appeals of New York, June 15th, 1880), *81 N. Y., 385*, the court says:—

"The provision of said Act (section 5242) prohibit- "ing the issuing of an attachment, injunction, or ex- "ecution against such an association, or its property "before final judgment applies only to an association "which has become insolvent, or to one about to "become so, as specified in the preceding part of the "section." Danforth, J., says in his opinion on page "393:—

> " 'The subject matter of the section is the
> " 'transfer of property by a banking association
> " 'made after the commission of an act of in-
> " 'solvency, or in contemplation thereof,'

"and when made under the circumstances therein "stated, such transfer, it says,

> " 'shall be utterly null and void, and no attach-
> " 'tachment * * * shall be issued against
> " 'such association or its property before final
> " 'judgment in any suit, action, or proceeding
> " 'in any State, county, or municipal court.'

"We concur with the general term in the opinion "that these words of prohibition must be deemed to "have the same relation as the other things prohib- "ited, and apply only to insolvent corporations, or

"one about to become so, and that the object of the "entire section is to prevent one creditor of the cor- "poration whose assets are insufficient to meet its lia- "bility from obtaining a preference, whether it is "sought through a voluntary assignment or transfer "of the payment, or the form of a legal proceeding "* * * the attachment is not to bring the de- "fendant into court; its object is to give the plaintiff "execution against the thing attached. (Kilburn *vs.* "Woodworth, 5 Johns., 37); it does not go beyond it; "* * * it is confined to the property taken, and "if it cannot be maintained the plaintiff is remedi- "less."

The foregoing decision of the Court of Appeals of New York was in 1880, and the following two decisions were rendered by the same court in 1882 and 1883:—

In the case of *The National Shoe and Leather Bank of the City of New York*, appellant, *vs. The Mechanics National Bank of Newark*, decided by the Court of Appeals of New York on June 20th, 1882, 89 N. Y., 440, it was held that

"An order vacating an attachment issued before "judgment is not reviewable here. A Receiver of an "insolvent National bank appointed after the issuing "of an attachment against it may, under the Code of "Civil Procedure (section 682), move to vacate the "attachment without being made a party to the "action."

And in the case of *Samuel Raynor* et al., appellants, vs. *The Pacific National Bank of Boston*, respondents, *93 N. Y. Reports, 371.*

"An attachment issued against a National bank "which is at the time insolvent is invalid (United "States Revised Statutes, section 5242), and is not "made valid by the subsequent acquisition of the "bank of further capital. The fact that the bank,

"after issuing of the attachment, pays in full does "not estop it from questioning the validity of the at- "tachment. The provision of the National Bank "Act prohibiting attachment in such cases is not re- "pealed by the Act of Congress of July 12th, 1883, "providing that the jurisdiction for suits thereafter "brought against National banks shall be the same "as for suits against State banks, and repealing laws "inconsistent therein."

The facts in the foregoing case are practically the same as in Bank vs. *Mixter,* supra.

Then comes the decision in *The Corn Exchange Bank* vs. *Blye*, which is relied upon by the learned president of the Common Pleas Court of Philadelphia County, as stated in his opinion in the case docketed in this court as No. 218, October Term (189 Pa. St., 606).

This case was decided by the Supreme Court of New York in General Term, October, 1885, *37 Hun., 473.* It came to the General Term from the Supreme Court of New York, and it is described as an "Appeal from an "order setting aside the requisition issued by the plain- "tiff to the sheriff of Orange County, directing him to "take into his possession certain bonds and certificates "claimed by the plaintiff in an action for the recovery "of their possession."

The syllabus is as follows:—

Requisition in an Action to recover Personal Property When it may Issue in an Action against the Receiver of a National Bank. United States Revised Statutes, Section 5242.

"In this action of replevin brought against the Re- "ceiver of a National bank to recover bonds and certifi- "cates claimed to belong to the plaintiff, a requisition "issued by the plaintiff to the sheriff, directing him to

"take possession thereof, was set aside upon the applica-
"tion of the defendant, upon the ground that its issue was
"prohibited by section 5242 of the United States Revised
"Statutes.

"*Held*, that the prohibition contained in that section
"against the issue of any 'attachment, injunction, or exe-
" 'cution' against such an 'association or its property be-
" 'fore final judgment in any suit, action, or proceeding
" 'in any State, county, or municipal court,' did not apply
"to such a requisition as was issued in this case; that it
"was only intended to prevent the interference with the
"assets or property owned by the bank itself, and not with
"such as might legally be claimed or proved to be the
"property of others."

In the opinion by the court, rendered by Daniels, J., Brady, J., and Davis, P. J., concurring, it is said:—

"Its (section 5242) object was to prevent the assets of
"an insolvent National bank from being appropriated or
"being interfered with by a creditor of the bank before
"the recovery of a final judgment in his action, and it has
"been so construed when it has been brought before the
"courts for consideration. (Robinson *vs.* Bank of New-
berne, N. Y., 81 N. Y., 385; Raynor *vs.* Pacific Bank,
93 *Id.*, 371; Rosenblatt *vs.* Johnston, 104 U. S., 462.)

"An action brought to recover the possession of prop-
"erty alleged not to be the property of the bank, and
"therefore not subjected to the custody or administration
"of its Receiver, is not included within the object or the
"language of this enactment. What it was designed to
"prevent was interference with the assets or property
"owned by the bank itself, and not those which might
"legally be claimed or proven to be the property of others.
"Its inhibition is that 'no attachment, injunction, or exe-
" 'cution shall be issued against such association or its
" 'property before final judgment in any suit, action, or
" 'proceeding in any State, county, or municipal court.'
"The requisition of the plaintiff was in no sense an at-
"tachment, injunction, or execution; neither was it is-

"sued against the property of the association, but for the "recovery of the possession of property claimed to belong "to the plaintiff. This section of the statute has not pro- "hibited a legal contest of this description; neither has it "subjected the party asserting a right of this nature to "any legal disability or restriction in the prosecution of "the action. And it in no event can have the effect of "depriving the Receiver of any of the assets or property "owned by the bank or secure a preference to any cred- "itor therein. All that can be accomplished by it is to "secure the recovery of the possession of the property by "the plaintiff, if it shall prove to be able to support its "claim of title made to it. If that cannot be done, or "title shown to be in the defendant as Receiver, then the "property will necessarily be returned to him. The liti- "gation must be wholly and exclusively devoted to the "investigation of the question of title, and an action for "such an investigation has in no manner been affected "by this section of the statute; it is outside of the re- "straints contained in the statute, and has in no way been "prohibited."

The case was taken to the Court of Appeals of the State of New York and decided by that court January 19th, 1886, 101 N. Y., 303. The syllabus is as follows, viz.:—

"A Receiver of an insolvent National bank acquires no "right to property in the custody of the bank, which it "does not own, as against the owner, and the provision "of the United States Revised Statutes (section 5242), "prohibiting the issuing of an attachment, injunction, or "execution against such a corporation before final judg- "ment, was not intended to protect the Receiver's custody "as against such owner.

"Accordingly, *held*, that said provision did not prohibit "the issuing, in an action against the Receiver of a Na- "tional bank to recover possession of personal property, "of a requisition directing the sheriff to take into his pos- "session the property in question; that the Receiver, if

"he desired to retain possession of the property during "the litigation, could only do so by giving the security "required, the same as other defendants in such an action."

And from the opinion of the court we quote as follows:—

"It (section 5242) specifically prohibits all transfers of "the corporate property made with a view to preferences, "and so protects the creditors from any voluntary act of "the bank which selects out favored individuals for pay- "ment. But the bank may be passive and such individ- "uals gain a preference by a suit against the corporation, "preceded or accompanied by an attachment or injunction, "or after judgment enforced by an execution. These "three things were specifically prohibited by name, each "being process well known and accurately defined in the "law, and without any general words to carry the pro- "hibition beyond them. The Receiver, by his appoint- "ment, acquires no right to property in the custody of the "bank which the latter does not own, as against the real "owner; and the section in question was plainly not in- "tended to protect the Receiver's custody as against such "owner. It aims to protect the property of the bank in "his hands and not to give him arbitrary control of what "the bank does not own. If the latter should be held, "its injustice is well suggested by the general term in its "application to special deposits of customers left merely "for safekeeping. It does not alter the case that there "is a dispute about the title, and the Receiver claims to "be owner. He might make such a claim in any case. "No law makes him the inevitable stakeholder pending "the litigation. He may become so by giving the needed "security, and we can see no reason why he should be "exempted from that obligation which falls upon others. "The plaintiff is required to give such security as the con- "dition of the writ, and the Receiver need run no risk "in the performance of his duty. It is said the word "'attachment' is used, not in the local sense affixed by "State enactments, but in a broader sense; and the defi-

"nition of Bouvier is cited. But by that definition and in "every use of the term it always assumes title in the per- "son against whom the writ issues, and seeks to hold pos- "session of his property, and on the ground and for the "reason that it is his. *No nomenclature has ever made it "the equivalent of a writ of replevin, which issues upon a "theory exactly the reverse.*

"There is no collision of jurisdictions. The authority "of the Federal courts over the assets and the right of its "officer to hold them is not questioned or invaded. No "property over which those courts have obtained jurisdic- "tion is interfered with. What is sought to be recovered "is property over which they have obtained no jurisdic- "tion, and as to which they have conferred no right upon "him."

The foregoing decisions of New York State courts were all rendered before that of this court in Pacific National Bank *vs.* Mixter, *supra.*

In Maryland the question arose directly in *The Chesapeake Bank* vs. *The First National Bank of Baltimore, Garnishee of the First National Bank of Washington* (decided by the Court of Appeals of Maryland, June 4th, 1874), *40 Maryland, 269.* Held:—

> "An attachment on warrant issued by a State court "to affect the funds of a National bank is illegal and "void, being in violation of section 57 of the Act of "Congress, chapter 106, approved June 3d, 1864, as "amended by section 2 of the Act of Congress, "chapter 26, approved June 3d, 1873, the latter sec- "tion providing 'that no attachment, injunction, or "'execution shall be issued against such (banking) "'association, or its property before final judgment "'in any suit, action, or proceeding in any State, "'county, or municipal court.' The second section "of the Act of Congress, chapter 269, approved March "3d, 1873, amending section 57 of the Act of Con- "gress, chapter 106, June 3d, 1864, is constitutional "and valid, being a provision to promote the effi-

"ciency of the National banks in performing the "functions which they were designed to serve the "Government and to protect them, not only against "interfering State legislation, but also against suits, "or proceedings in State courts by which their effi- "ciency would be impaired."

The facts of the case are stated in the opinion of the court—

"The appellant (Chesapeake Bank) on the 18th of "September, 1873, caused an attachment on warrant "to be issued out of the Superior Court of Baltimore "City to affect the property and credits of the First "National Bank of the city of Washington, D. C., "as a non-resident debtor, which was laid in the hands "of the First National Bank of Baltimore, as gar- "nishee. In October following, the garnishee filed a "motion to quash for reasons alleged and from the "judgment of the court quashing the writ, this ap- "peal is taken. It is conceded the decision of the "Superior Court was based upon the first reason stated "in the motion, as follows: "That said First National " 'Bank of Washington was, before said attachment, " 'and at the time of the issue thereof, and still is, " 'an association for the purpose of carrying on the " 'business of banking, organized duly under the Act " 'of Congress of June 3d, 1864, and that by the " 'second section of the Act of Congress, approved " 'March 3d, 1873, it is enacted that the fifty-seventh " 'section of the first mentioned Act be amended by " 'adding thereto the following: "that no attachment, " 'injunction, or execution shall be issued against such " 'association, or its property, before a final judgment " 'in any suit, action or proceeding, in any State, " 'county, or municipal court," and that by the force " 'of said section of said Acts the said attachment is " 'illegal and void.' "

The statute has been construed in other States:—

In Minnesota. In *First National Bank of Kasson* vs.

Ambrose La Due (decided by the Supreme Court of Minnesota, on November 20th, 1888), 39 Minn., 415, it is held:—

> "The Federal statutes (U. S. Rev. St., section "5242), prohibit the issuance of writs of attachment "by the State courts before final judgment against "National banking associations or their property.
>
> "An attachment and seizure of property made by "virtue of a writ so issued and served is illegal and "void and no jurisdiction over the person or property "of such an association is obtained thereby."

In Vermont. In *Safford* vs. *First National Bank of Plattsburg and Trustee* (garnishee) (decided by the Supreme Court of Vermont, at January Term, 1889), *61 Vt., 373*, the court decides:—

> "Under U. S. Rev. St., section 5242, the property "of a National bank cannot be attached before final "judgment. The trusteeing a debt due such a bank "is in effect the attachment of the property of the "bank; hence when the only service on a non-resident "bank was by leaving a copy in the hands of the "trustee, such a service is void and the court obtains "no jurisdiction. The judgment overruling motion "to dismiss is reversed and motion sustained and cause "dismissed."

In *Georgia. The Planter's Loan & Savings Bank* vs. *Berry* (the statement of facts is in the case of the National Park Bank *vs.* Berry, 89 Ga., 333 (decided by the Supreme Court of Gergia, February 13th, 1893), 91 Georgia, 264. The syllabus reads:—

> "The statute of the United States prohibits seizure "of property belonging to National banks *irrespective* "*to whether they be solvent or insolvent* before final "judgment by virtue of any attachment issued under "a State law, and returnable to a State court. *Any* "*such seizure is, therefore, void* and a bond given by a

"National bank to dissolve such attachment *served "by summons of garnishment* is also void. The giv- "ing of such bond is not an appearance in the attach- "ment case, so as to make valid a judgment entered "up on the bank in that case against the bank and the "securities executing the bond. The judgment is "wholly void and an affidavit of illegality made and "filed by one of the securities in resistance to a levy "upon his property under an execution founded on "the judgment must be sustained. The judgment be- "ing wholly void for want of jurisdiction in the court "rendering it, affidavit of illegality is a proper de- "fensive remedy."

Bleckley, Chief Justice, says:—

"How the statutes of the United States stand at "the present time on the subject of protecting Na- "tional banks against seizure of their effects by virtue "of attachments in advance of final judgments, may "be seen by reference to United States Revised Stat- "utes, section 5242. The only words necessary to "be now quoted are these: 'And no attachment, in- " 'junction, or execution shall be issued against such " 'association or its property before final judgment in " 'any suit, action, or proceeding in any State, county, " 'or municipal court.' The opinion, whether profes- "sional or judicial, which construes this legislation as "allowing seizure under attachment before final judg- "ment in case the defendant bank is solvent, and pro- "hibiting it only where the bank is insolvent, is "manifestly unsound. Certainly, no such distinction "is made in the letter, and we discern no necessity "for it in the context or in the reason and spirit of "the legislation. The statutory policy seems to be "to prevent all preference or priority in claims against "these banks sought to be acquired by seizure of ef- "fects under State authority before final adjudica- "tion of such claims, and to protect the banks from "being weakened or crippled by such antecedent

"seizures. The National banks created by Con-
"gress are to control their own assets and resources,
"as against State interference at the instance of cred-
"itors, or of pretended creditors, until the real ex-
"istence of alleged debts has been ascertained by
"final judgment. Ante-judgment seizures cannot be
"made; a State can make post-judgment seizures
"only. *Mesne* process will not suffice for seizing by
"State courts; these courts can seize alone by final
"process. This policy may be wise or unwise, whole-
"some or unwholesome, but in either event it is the
"one established by competent legislative authority,
"and must be respected and enforced accordingly.
"In Pacific National Bank *vs.* Mixter, 124 U. S., 727,
"Waite, C. J., said: Although the provision was evi-
"dently made to secure equality among the general
"creditors in the division of the proceeds of the prop-
"erty of an insolvent bank, its operation is by no
"means confined to cases of actual or contemplated
"insolvency. The remedy is taken away altogether,
"and cannot be used under any circumstances.
"Whether this was *obiter* or not, as applied to the
"facts of that case, we agree with it and accept it
"as sound interpretation of this statute."

In Massachusetts the construction of this statute came up upon the issue of a writ of injunction in the case of *Freeman Manufacturing Company* vs. *National Bank of the Republic of Boston* et al., decided January 6th, 1894, *160 Mass., 398*. The syllabus is as follows:—

"Under United States Revised Statute 5242 a
"State court has no power to issue a preliminary
"injunction against a National bank, and this pro-
"vision of the statute is not repealed by United
"States Statutes, July 12th, 1882, section 4; March
"3d, 1887, section 4; or August 13th, 1888, sec-
"tion 4."

The court says:—

"The only question before us is whether a State "court has power to issue injunctions before final "judgment.

"In Revised Statutes United States, section 5242, "after provisions avoiding payments made in con-"templation of insolvency, &c., the section continues: "'And no attachment, injunction, or execution shall "'be issued against such association or its property "'before final judgment in any suit, action, or pro-"'ceeding in any State, county, or municipal court.' "Possibly these words, if enacted in their present "connection for the first time, might be limited to "insolvent banks. Raynor *vs.* Bank, 93 N. Y., 371. "But this clause is simply a codification of a pro-"viso added to Statutes United States 1864, chapter "106, section 57 (13 Stat., 116, 117), giving juris-"diction over banks to State as well as to United "States courts, by Statute United States, 1873, "chapter 269, section 2 (17 Stat., 603). It cannot "be limited in that way. Bank *vs.* Mixter, 124 U. S., "721, 726, 727, 8 Sup. Ct., 718. There is nothing "in the context to limit it in any other. The argu-"ment that it is unreasonable that Congress should "go so far; that the presumable motive for the law "was to prevent an important wheel of business be-"ing stopped; and that this motive could be satis-"fied by limiting the injunctions mentioned to such "as would place the general assets of the bank be-"yond its control by *mesne* process having the effect "of an attachment.

"But such arguments are very doubtful ground for "giving words an unnatural construction. The "words used are of unlimited scope. The limited in-"terpretation gives them an unusual meaning. The "prohibition, whether reasonable or not, is intelligible "when we consider that, at the time when the pro-"hibition was first passed, any plaintiff was at liberty "to sue in the United States courts, and could ob-

"tain an injunction there. The fact that this power "has been taken away cannot change the construc- "tion of the words. Bank *vs.* Mixter, 124 U. S., "721, 727, 728, 8 Sup. Ct., 718. The jurisdiction "and the extent of the power to be exercised by State "courts depend upon the permission of the United "States. The wrongs likely to be done by National "banks are of a pecuniary nature, and the banks "usually are amply able to make good any damage "which they may do, so that there is not the same "necessity for preventative remedies that there is with "individuals or corporations, for whose solvency less "stringent precautions are taken. We are of opinion "that the language of the statute must be read in "its natural sense, in accordance with what we un- "derstand to have been the view of the Supreme "Court of the United States in Bank *vs.* Mixter, "*supra.*"

Sections 5234, 5236, 5242 of the U. S. Rev. Stat. are the sections particularly relied on as controlling this case.

Section 5234 provides for the appointment of the Receiver by the Comptroller of the Currency, and defines his duties as follows:—

"On becoming satisfied, as specified in sections "5226 and 5227, that any association has refused to "pay its circulating notes as therein mentioned, and "is in default, the Comptroller of the Currency may "forthwith appoint a Receiver, and require of him "such bond and security as he deems proper. Such "Receiver, under the direction of the Comptroller, "shall take possession of the books, records, and "assets of every description of such association; "collect all debts, dues, and claims belonging to it, "and upon the order of a court of record of com- "petent jurisdiction may sell or compound all bad "or doubtful debts, and on a like order may sell all "the real and personal property of such association

"on such terms as the court shall direct, and may, if "necessary to pay the debts of such association, en- "force the individual liability of the stockholders. "Such Receiver shall pay over all money so made "to the Treasurer of the United States, subject to the "order of the Comptroller, and also make report to "the Comptroller of all his acts and proceedings."

Section 5236 provides:—

"From time to time after full provision has been "first made for refunding to the United States any "deficiency in redeeming the notes of such associa- "tion. The Comptroller shall make a ratable divi- "dend of the money so paid over to him by such Re- "ceiver on all such claims as may have been proved "to his satisfaction, or adjudicated in a court of com- "petent jurisdiction, and as the proceeds of the assets "of such association are paid over to him, shall make "further dividends on all claims previously proved or "adjudicated, and the remainder of the proceeds, if "any, shall be paid over to the shareholders of such "association, or their legal representatives, in propor- "tion to the stock by them respectively held."

Section 5242 reads:—

"All transfers of the notes, bonds, bills of exchange, "or other evidences of debt owing to any National "banking association, or of deposits to its credit; all "assignments of mortgages, securities on real estate, "or of judgments or decrees in its favor; all deposits "of money, bullion, or other valuable thing for its "use, or for the use of any of its shareholders or "creditors, and all payments of money to either made "after the commission of an act of insolvency, or in "contemplation thereof, made with a view to prevent "the application of its assets in the manner prescribed "by this chapter, or with a view to the preference of "one creditor to another, except in payment of its

"circulating notes, shall be utterly null and void. "No attachment, injunction, or execution shall be is- "sued against such association, or its property, before "final judgment in any suit, action, or proceeding in "any State, county, or municipal court."

The proceedings in attachment execution under the laws of Pennsylvania are so called because the writ is founded upon a judgment, and as this is the writ under discussion, we will quote from the laws of the State providing therefor. See Pepper & Lewis' Digest, commencing vol. I., page 1939, section 55 (1836, June 16th, P. L., 755, section 35):—

"In the case of a debt due to the defendant, or of "a deposit of money made by him, or of goods or "chattels pawned, pledged, or demised as aforesaid, "the same may be attached and levied in satisfaction "of the judgment in the manner allowed in the case "of a foreign attachment, but in such case a clause "in the nature of a *scire facias* against a garnishee "in foreign attachment shall be inserted in such writ "of attachment requiring such debtor, depositary, "bailee, pawnee, or person holding by demise, as "aforesaid, to appear at the next term of the court, "or at such other time as the court from which such "process may issue shall appoint, and show cause "why such judgment shall not be levied of the effects "of the defendant in his hands."

Again, on page 1942, section 56, *Id.* (1836, June 16th, P. L., 755, section 36):—

"It shall be the duty of the officer charged with "the execution of such writ, to serve a copy thereof "upon the defendant in such judgment and upon "every person and corporation within its proper "county named in the said writ of attachment, in the "manner provided for the service of a writ of sum- "mons in a personal action."

And again, on page 1942, section 58, *Id.* (1836, June 16th, P. L., 755, section 37):—

> "From and after the service of such writ all stock "belonging to the defendant in the corporation upon "which service shall be so made, and all debts and all "deposits of money and all other effects belonging "or due to defendant by the person or corporation "upon which service shall be so made, shall remain "attached in the hands of such corporation or person "in the manner heretofore practiced and allowed in "the case of foreign attachment."

Again, on page 1943, section 59, *Id.* (1836, June 16th, P. L., 755, section 38):—

> "If judgment shall be given for the plaintiff in such "attachment, it shall be lawful for him to have execu-"tion thereof, as follows, to wit: (1) If the property "attached be stock in a corporation, as aforesaid, the "execution shall be by writ of *fieri facias* against the "original defendant by virtue of which such stock, "or so much thereof as shall be necessary to satisfy "the judgment and costs, may be sold by the sheriff, "as in other cases; (2) If the property attached be a "deposit in money or a debt due, as aforesaid, exe-"cution shall be had in the manner allowed in the case "of effects in the hands of a garnishee in a foreign "attachment."

And again, on page 1946, section 64 (1872, April 5th, P. L., 43, section 1):—

> "In all cases where execution attachments have "been, or which shall hereafter be, issued out of any "Court of Common Pleas (or district court) of this "Commonwealth attaching debts, moneys, stocks, or "other property in the hands of any persons or cor-"porations as garnishees, and when from any cause "proceedings have been stayed on the judgment on "which such execution attachments have been issued,

"it shall be lawful for the defendant, or defendants "in the judgment on which said attachments shall "have been issued, to file a bond with one or more "sureties, to be approved of by the court issuing said "attachment, in such amount as the court shall di- "rect, conditioned that the defendants shall pay to "the plaintiff, on the determination of the case, what- "ever amount shall be finally adjudged to be due by "the garnishees under the said attachments, if such "amount shall be required to pay the judgment and "costs, and on filing such bond, approved as aforesaid, "the said garnishee or garnishees shall thereupon be "discharged from all further liability under said at- "tachment, but the cause may be prosecuted to final "judgment for the purpose of ascertaining the amount "due by the garnishee, but the defendant and his sure- "ties in the bond shall alone be liable to pay such "judgments and costs."

And again, on page 1947, section 65, *Id.* (1863, April 22d, P. L., 527, section 1):—

"Where in any attachment-execution, or *scire* "*facias* on foreign attachment issued out of any court "of record in this State, the garnishee, after issue "joined therein, shall be found to have in his pos- "session or control no real or personal property of "the defendant, nor to owe him any debt other than "such property or debts as shall have been already "admitted by the plea or answers of the garnishee, "or in case without going to trial the plaintiff shall "take judgment against the garnishee for what shall "be so admitted in his plea or answer, then, and in "either such case, the garnishee shall be entitled, in "addition to the costs already allowed by law, to a "reasonable counsel fee out of the property in his or "their hands, to be determined and taxed in case of "dispute by the court, or by some person appointed "for that purpose."

The only exemption to attachment execution under this law is on page 1946, section 63, *Id.* (1845, April 15th, P. L., 459, section 5):—

> "The wages of any laborers, or the salary of any "person in public or private employment, shall not "be liable to attachment in the hands of the em- "ployer."

In Pennsylvania the laws provide for attachment proceedings as follows:—

1. A "domestic attachment" is a proceeding against an inhabitant of the State who absconds, &c., with intent to defraud creditors or avoid service of process.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., 108 *et seq.*

2. A "foreign attachment" is a proceeding against non-residents of the State.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., section 75 *et seq.*

3. An attachment, under the "Fraudulent Debtors' Act of 1869," applies to removal or assignment or concealment of property, and to fraud in contracting the debt.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. I., section 51 *et seq.*

4. An attachment execution or attachment *sur* judgment is, as its name implies, an attachment begun after judgment has been first entered against the defendant.

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. II., section 3253 *et seq.*

Brewster's Practice is a recognized authority upon all subjects of practice in the State of Pennsylvania.

The "domestic," "foreign," and "fraudulent debtor" proceedings before named are generally used where an

attachment is sought at the inception of the suit, and have a twofold purpose: (1) Personal service upon the defendant against whom a judgment is desired; (2) an immediate lien on defendant's property to await and satisfy such judgment, if attached. The first is by the writ of summons in *assumpsit*, &c., and the second by seizure by writ of attachment of defendant's property, subject to direct levy and execution, or by garnishing defendant's property in the hands of his debtors that is not subject to direct levy and execution.

In each of them garnishment is an important feature of the attachment proceedings. It is not necessary for the attachment to issue at the inception of the suit; personal service may first be had, and attachment proceedings begun after personal service upon the defendant, but before judgment. In each of the first three proceedings named the claim of the plaintiff not having been determined before judgment, the defendant is protected from oppressive suits by requiring, as a prerequisite to attachment, an affidavit as to the truth and justness of the claim, and a bond of indemnity against damages in case of failure of suit. The dual proceedings being (1) *in personam* (seeking a personal judgment against defendant); (2) *in rem* (seizure or garnishment of property of defendant awaiting the issue *in personam*).

In the "attachment execution" proceeding, the fourth named, the one now under consideration, the defendant in error first pursued ~~Long~~, *in personam*, to judgment before pursuing him *in rem*. It is upon the judgment *in personam* against ~~Long~~ that the writ of attachment is issued and served against the bank as garnishee. The writ of attachment is practically the same as it would have been if issued against the bank, garnishee, under "domestic," "foreign," or "fraudulent debtor" proceedings—the bank, by a summary proceeding commenced against it, is attached in mesne process summoning it into court to appear and answer within fifteen days or judgment *sec. reg.*

No more effectively could an injunction restrain than an "attachment execution." It operates as an injunction,

also as an execution or aid in execution. It has in it all the elements expressly prohibited and intended to be prohibited by Congress in the letter and spirit of the enactment in the Revised Statutes, section 5242.

Shinn on Attachment & Garnishment, vol. I., section 191 *et seq.;* also *Id.*, vol. II., section 466 *et seq.*

In the case of Ege *vs.* Koontz (decided by the Supreme Court of Pennsylvania in 1846), 3 Pa. St., 109, it is *held*:—

> "The legal effect of an attachment laid upon a debt "is, to restrain the garnishee from paying over the "money, either to his individual creditor or to the at- "taching creditor, until the attachment is disposed "of, and then only according to the result of that "proceeding."

Ancillary, in a sense, to the action against Schall *in personam*, in which judgment has been entered and in which sense only, that is, from the standpoint of the judgment, it is sometimes called "final process;" in another sense, that of its relation to the garnishee, it is the commencement of an original "suit, action, or proceed- "ing" by the judgment debtor (Schall) to the use of the judgment creditor of Schall (defendant in error) by attachment in *mesne* process against the bank, or its Receiver. "Proceedings upon attachment execution bear a "close analogy to those in foreign attachment, subsequent "to the judgment against defendant."

Brewster's Practice (Common Pleas) (2d ed., 1896), vol. II., section 3261;

Shinn on Attachment & Garnishment (1896), vol. II., section 469 *et seq.;*

Gochenaur's Executors *vs.* Hostetter, 18 Pa. St., 414;

Childs *vs.* Digby, 24 Pa. St., 26-27;

Shinn on Attachment and Garnishment (1896), vol. II., section 469 and cases cited in note.

Garnishment is a supplemental proceeding to execution.

Freeman on Execution (2d ed.), vol. II., section 416;
Am. & Eng. Enc. of Law, vol. VIII., page 1101.

Garnishment is a mode of attachment, a seizure by notice.

Am. & Eng. Enc. of Law, vol. VIII., 1101 *et seq.;*
Rood on Garnishment (1896), section 192 (page 238);
Shinn on Attachment & Garnishment (1896), vol. II., section 467.

General nature of garnishment.

Am. and Eng. Enc. of Law, vol. VIII., page 1100;
Rood on Garnishment (1896), chapter I.;
Shinn on Attachment & Garnishment (1896), chapter XXIII.

"Garnishment is a proceeding by which the plain-
"tiff, in a suit to recover on a debt, may institute
"another suit at law, in lieu of the defendant, against
"a debtor of the defendant, without the defendant's
"concurrence, and it may be against his will to sub-
"ject the money or property in the hands of such
"debtor to the satisfaction of the plaintiff's judgment
"in the first suit."

Shinn on Attachment & Garnishment (1896), vol. II., section 465 *et seq.*

"The right of attachment by garnishment is not
"known to the common law. It depends wholly
"upon the provisions of the statute for its validity
"and effect, and it cannot be extended beyond the
"strict provisions thereof."

Shinn on Attachment & Garnishment, vol. II., section 485.

National, State, and municipal governments and public officers are exempt from garnishment. (Among other reasons, because it is against public policy.)

Rood on Garnishment (1896), sections 25, 26.

The Federal government, the State, the District of Columbia, a county or borough, a city, the town, a school district cannot be made a garnishee.

Shinn on Attachment & Garnishment (1896), vol. II., section 500, and note on page 873 and cases cited.

A treasurer or other officer of a National, State, or municipal government is beyond the reach of a process of garnishment.

Id., section 503.

In this connection we quote from the opinion in Farmer's & Mechanic's National Bank *vs.* Dearing, decided by this court at October Term, 1875, error to the Court of Appeals of the State of New York, *91 U. S., 29.* The usury laws of the State of New York were held to be in conflict with the laws of the United States, and the judgment of the Court of Appeals of that State was reversed. Mr. Justice Swayne, rendering the opinion of this court, on page 33 says:—

"The constitutionality of the Act of 1864 (National "Bank Act) is not questioned. It rests on the same "principle as the Act creating the Second Bank of "the United States. The reasoning of Secretary "Hamilton, and of this court in McCulloch *vs.* Mary-"land (4 Wheat., 316), and in Osburne *vs.* The Bank "of the United States (9 *Id.*, 708), therefore applies. "The National banks organized under the Act are "instruments designed to be used to aid the Govern-"ment in the administration of an important branch "of the public service. They are means appropriate "to that end. Of the degree of the necessity which "existed for creating them Congress is the sole judge.

"Being such means brought into existence for the "purpose, and intended to be so employed, the States "can exercise no control over them, nor in anywise "affect their operation, except in so far as Congress "may see proper to permit. Anything beyond this "is 'an abuse, because it is the usurpation of power "'which a single State cannot give' against the "National will. 'The States have no power, by tax-"'ation or otherwise, to retard, impede, burden, or "'in any manner control the operation of the consti-"'tutional laws enacted by Congress, to carry into exe-"'cution the powers vested in the general govern-"'ment.'"

Bank of the United States *vs.* McCulloch, *supra;*
Weston & others *vs.* Charleston, 2 Pet., 466;
Brown *vs.* Maryland, 12 Wheat., 419;
Dobbins *vs.* Erie County, *Id.*, 419.

"The power to create carries with it the power to "preserve. The latter is a corollary from the former.

"The principle announced in the authority cited is "indispensable to the efficiency of the independence, "and, indeed, to the beneficial existence of the gen-"eral Government, otherwise it would be liable in the "discharge of its most important trusts, to be an-"noyed and thwarted by the will or caprice of every "State in the Union. Infinite confusion would fol-"low. The Government would be reduced to a piti-"able condition of weakness. The form might re-"main, but the vital essence would have departed."

In view, therefore, of the fact that "National banks "organized under the Act are instruments designed to be "used to aid the Government in the administration of an "important branch of the public service," and were cre-ated and are controlled solely by the laws of the United States, and in a sense are agents of the United States, it is in line with the exemption of the United States "Gov-

"ernment" and its public officers from being subjected to the process of garnishment, that National banks should be so exempted, and the construction, we claim, for section 5242 is the natural one, and in accord with ruling principles and reason.

The Receiver of a National bank appointed by the Comptroller of the Currency, as provided by law, is presumed to be appointed by the approval and concurrence of the Secretary of the Treasury, within the meaning of section 2, article II., of the Constitution of the United States, and is an officer of the United States.

Price *vs.* Abbott, 17 Fed. Rep., 506;
Frelinghuysen *vs.* Baldwin, 12 Fed. Rep., 395;
Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209;
In re Petition of Chetwood, 165 U. S., 443.

In the case of Commonwealth of Pennsylvania, at the suggestion and to the use of The Commonwealth Title, Insurance and Trust Company, Trustee, &c., *vs.* George H. Earle, Jr., Receiver of the Chestnut Street National Bank (decided by the Supreme Court of Pennsylvania on January 30th, 1899), 189 Pa. St., 606, involving the questions herein and now pending in this court upon writ of error (No. 218, October Term, 1899), the said Supreme Court of Pennsylvania adopted as its own the opinion of the learned president of the lower court, who relied upon the decision in Corn Exchange Bank *vs.* Blye, 101 N. Y., 303, to sustain the view of that court that attachment proceedings such as those in the case at bar are not within the meaning of the prohibition of section 5242 aforesaid. This was error, the action in the New York case was one in *replevin*, and the court held that "re-"*plevin*" was not prohibited, but that "attachment, in-"junction, and execution" in *mesne* process was prohibited.

It has been said by the learned counsel for defendant in error:—

> "The act of attachment is merely to require the "bank, instead of paying to Schall such dividend as

"may be awarded to him upon his deposit, to pay it "to his judgment creditor in satisfaction of his judg- "ment."

(Passing, for the sake of argument, the fact that the bank may not be indebted to Schall)—

We answer, if the power lies in the State court to order —upon a writ of attachment in *mesne* process, garnishing the Receiver of an insolvent National bank—such Receiver to pay a judgment creditor the debt due by it to the judgment debtor, the power is included not only to pay by dividends, but to pay in full, for if the State court has jurisdiction by attachment at all, it has the same power that it would have in a case other than one against an insolvent National bank, and it was this power that Congress has deemed it wise to arbitrarily eliminate from the State courts—illustrating, a National bank contemplates insolvency, liabilities $100,000; assets $50,000, with 100 depositors; it owes 10 depositors $50,000 and the remaining 90 depositors $50,000. The 10 depositors confess judgments aggregating $50,000 to their creditors in a State court, and their then judgment creditors at once seize by notice (garnish) the assets of the bank (Receiver) by issuing and serving writs of attachment *sur* judgment, by this process securing to themselves all the assets, leaving nothing to be administered upon in the hands of the Receiver by the Comptroller of the Currency under section 5234, United States Revised statutes, creating thereby a preference which is forbidden by the statute.

The rights of the creditors of the creditors of an insolvent National Bank are not greater than those of its immediate creditors, and it must be observed that the application to vacate and dismiss the attachment is in this case not made by the bank for the benefit of its stockholders, but by the Receiver of the bank for the benefit of its creditors.

Auburn Savings Bank *vs.* Hayes, 61 Fed. Rep., 911;

The Ocean National Bank *vs.* Carll, 7 Hun., 237;
Wade on Attachments, section 332;
Drake on Attachments (7th ed.), section 452;
Bank of Northern Liberties, Garnishees, *vs.* Jones *et al.*, 42 Pa. St., 536;
White *vs.* Knox, 111 U. S., 784;
National Security Bank *vs.* Butler, 129 U. S., 223.

A Table of the Statutory Laws Cited.

Revised Statutes of the United States, sections 5234, 5236, 5242.

Pepper & Lewis' Digest (Penna. Laws), vol. I., page 1939, section 55 (1836, June 16, Penna. Laws, 755, section 35).

Id., page 1942, section 56 (*Id.*, section 36).

Id., page 1942, section 58 (*Id.*, section 37).

Id., page 1942, section 59 (*Id.*, section 38).

We cite also—

Id., page 1946, section 64 (1872, April 5th, Penna. Laws, 43, section 1).

Id., page 1947, section 65 (1863, April 22d, Penna. Laws, 527, section 1).

Id., page 1946, section 63 (1845, April 15th, Penna. Laws, 459, section 5).

A Table of the Cases and Authorities Cited.

Commonwealth of Pennsylvania, at the suggestion and to the use of the Commonwealth Title Insurance and Trust Company, Trustee, &c., appellee, *vs.* George H. Earle, Jr., Receiver of the Chestnut Street National Bank, appellant, 189 Pa. St., 606.

William Conway *vs.* George H. Earle, Jr., Receiver of the Chestnut Street National Bank, 189 Pa. St., 610.

Pacific National Bank *vs.* Mixter, 124 U. S., 721.

Corn Exchange Bank *vs.* Blye, 101 N. Y., 303.

Farmers and Mechanics' National Bank *vs.* Dearing, 91 U. S., 29.

California Bank *vs.* Kennedy, 167 U. S., 362.

Davis *vs.* Elmira Savings Bank, 161 U. S., 275.

Garner *vs.* Second National Bank, 66 Fed. Rep., 369.

Southwick *vs.* Bank, 7 Hun. (N. Y.), 96.

Rhoner *vs.* Bank (overruling Southwick *vs.* Bank), 14 Hun. (N. Y.), 126.

The Central National Bank *vs.* The Richland National Bank, 52 How. Pr. (N. Y.), 136.

Robinson *vs.* Bank, 81 N. Y., 385.

The National Shoe and Leather Bank *vs.* Bank, 89 N. Y., 440.

Raynor *vs.* Bank, 93 N. Y., 371.

The Chesapeake Bank *vs.* Bank, Garnishee, 40 Maryland, 269.

Bank *vs.* La Due, 39 Minn., 415.

Safford *vs.* Bank and trustee (garnishee), 61 Vt., 373.

The Planter's Loan & Savings Bank *vs.* Berry, 91 Georgia, 264.

Freeman Manufacturing Company *vs.* Bank, 160 Mass., 398.

Gochenaur's Executors *vs.* Hostetter, 18 Pa., St., 414.

Childs *vs.* Digby, 24 Pa. St., 26, 27.

Price *vs.* Abbott, 17 Fed. Rep., 506.

Frelinghuysen *vs.* Baldwin, 12 Fed. Rep., 395.

Armstrong *vs.* Ettlesohn, 36 Fed. Rep., 209.

In Re Chetwood, Petitioner, 165 U. S., 443.

Auburn Savings Bank *vs.* Hayes, 61 Fed. Rep., 911.

The Ocean National Bank *vs.* Carll, 7 Hun. (N. Y.), 237.

Cadle, Receiver of the First National Bank of Selma, *vs.* Tracy, 11 Blatch., 101.

Bank of Northern Liberties, Garnishees, *vs.* Jones, 42 Pa. St., 536.

National Bank *vs.* Colby, 21 Wall., 609, 613.

White *vs.* Knox, 111 U. S., 784.

National Security Bank *vs.* Butler, 129 U. S., 223.

Brewster's Practice (Com. Pleas) (2d ed., 1896), vol. I., sections 108 *et seq.*, 75 *et seq.*, 51 *et seq.*; vol. II., sections 3253 *et seq.*, 3261 *et seq.*

Shinn on Attachment & Garnishment, vol. I., section 191 *et seq.*, chapter XXIII.; vol. II., sections 465 *et seq.*, 467, 469 *et seq.*, and cases cited in note, 485, 500, and note and cases cited, 503.

Freeman on Executions (2d ed.), vol. II., section 416.

Am. & Eng. Enc. of Law, vol. VIII., pages 1100, 1101 *et seq.*

Rood on Garnishment (1896), sections 25, 26, 192.

Id., chapter I.

Wade on Attachments, section 332.

Drake on Attachments (7th ed.), section 452.

Respectfully submitted,

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No. 219.

Office Supreme Court U. S.
FILED
MAR 13 1900
JAMES H. McKENNEY,
Clerk.

No. 219. Of October Term, 1899.

Sup'r. Ct. Pa. of Johnson for D. G.

IN THE

Supreme Court of the United States.

Filed Mar. 13, 1900.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error,

vs.

William Conway.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

(RECORD No. 17,307.)

JOHN G. JOHNSON,
Of Counsel for Plaintiff in Error.

Allen, Lane & Scott, Prs., Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

[RECORD NO. 17,307.]

George H. Earle, Jr., Receiver of the Chestnut Street National Bank, Plaintiff in Error,	October Term, 1899.
vs.	No. 219.
William Conway.	

SUPPLEMENTAL BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

In addition to the point elaborately argued in the original brief, we beg leave to submit the following supplemental considerations.

The affidavit for a rule to vacate the attachment against the Receiver of the Chestnut Street National Bank showed that said bank had become insolvent on the 23d December, 1897, on which day it suspended payment of its obligations, and that the plaintiff in error had been appointed by the Comptroller of the Currency of the United States, under the laws thereof, Receiver of said bank, on or about the twenty-ninth day of January, 1898. It appears by the docket entries in the Court of Common Pleas, No. 4, of Philadelphia County, (Record, page 9), that on the twenty-fourth day of May, 1898, one Conway, who had obtained a judgment against one Schall, who was a creditor of the bank, caused an attachment execution to issue, which was served upon the said Receiver,

as garnishee, on that day. On the twentieth day of June, 1898, a rule taken by the Receiver, on the eighth day of June, to set aside the service of the writ of attachment and to dismiss and vacate the proceedings therein, was discharged. The result is that a Receiver of an insolvent National bank, duly appointed by the Comptroller of the Currency, is subjected to an attachment proceeding in a State court for the purpose of compelling him to pay, through the sheriff, to Conway, moneys due, or alleged to be due, by the insolvent bank to Schall. Neither the bank nor the Receiver has any interest in those proceedings, which tend to delay the settlement of the affairs of the bank. He is served not in his individual, but in his official, capacity. As a Receiver—an official of the United States—he is summoned to appear in the State court, upon the theory that he has funds of the judgment debtor in his possession. We will show that he has not and cannot have such funds. We will argue that the legal consequence is inevitable that he is exempt from process which can only issue when he has, or can have, such funds.

We submit there is no power whatever to subject the Receiver to such proceedings. He has a right to the protection of this court, because the question he raises is one growing out of the laws of the United States. He claims that under the National Banking Act, he cannot be subjected to an attachment for the purpose of recovering a debt alleged to be due by the bank to a third person, because it is impossible for him to have any funds of the bank subject to attachment.

This court held in Auten *vs.* United States National Bank, 174 U. S., 140, that a Receiver of a National bank, appointed by the Comptroller of the Currency, is an officer of the United States, and that an action against him is one arising under the laws of the United States.

The object of an attachment execution is to seize and appropriate for the benefit of a judgment creditor an indebtedness owing to the judgment debtor by the garnishee attached. If, under the laws of the United States, the garnishee has, and can have, no funds subject to attachment, he is entitled to immunity from such attachment.

The result of sustaining the judgment of the Supreme Court of Pennsylvania will be, to impose upon the Receiver the duty of appearing in court, of employing counsel, of answering interrogatories, of pleading and of submitting to a trial. He will not be compelled to pay the expense to which he will be subjected out of his own funds. These must be paid out of the funds of the insolvent bank. In addition to this, an obligation will be imposed upon him similar to that actually imposed in case No. 218, where the lower court entered a judgment, sustained in the Supreme Court (Record, page 66), which awarded execution in favor of the plaintiff against any dividends upon the debtor's deposit with the bank, and also ordered a sale thereunder of certain stock held by the bank in pledge. If the attachment be allowed to stand, the Receiver will be ordered to pay over any dividends due to Schall, to the sheriff.

By the Act of 30th June, 1876, the jurisdiction of the Comptroller of the Currency to appoint a Receiver is extended to cover cases in which he is satisfied of the insolvency of a National banking association. Whenever a Receiver for a National bank is appointed by the Comptroller of the Currency, it is provided as follows by section 5234:—

> Such Receiver, under the direction of the Comptroller, shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such Receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings.

By section 5236 it is, *inter alia*, provided:—

> From time to time * * * the Comptroller shall make a ratable dividend of the money so paid over to him by such Receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated.

Under the statute, the Receiver can pay no money which comes into his hands, as the result of his administration of the assets of the insolvent bank, to any creditor of the latter. It is his duty to deposit all his receipts of money with the Treasurer of the United States. After such deposit, the same are subject to the order of the Comptroller. It is the duty of the latter, not that of the Receiver, to make dividends thereout in favor of creditors.

The effect of the attachment is to interfere with the Receiver in the discharge of his statutory duty to pay over his receipts to the Treasurer of the United States.

The State court would have no right to make any order upon the Comptroller of the Currency, because he is not within its jurisdiction. Even if moneys in the hands of the Treasurer of the United States could be attached, it is sufficient in the present case to say that no attachment was laid in his hands, though he was in possession of the funds of the bank. The effect of the proceeding, if permitted to stand, would be, to compel the Receiver to deal with an attaching creditor of the bank, in violation of the statute which requires him to deal only with the Treasurer of the United States, under the control of the Comptroller.

Pursuing his duty as prescribed by the statute, the Receiver deposited the moneys of the bank to the order of the Comptroller, with the Treasurer. The State court will hold him under compulsion to pay over to the attaching creditor the dividends which may be awarded to the judgment debtor. How can he do this, without withholding money, with which the statute compels him to deal differently?

We concede that we are not considering the case of an attachment against a Receiver appointed by a judicial authority. This court has held that such is not the *status* of a Receiver of a National bank.

In re Chetwood, 165 U. S., 458, it was said by Mr. Chief Justice Fuller :—

> The Receiver was not the officer of any court, but the agent and officer of the United States. * * * The Receiver acts under the control of the Comptroller of the Currency, and the moneys collected by him are

paid over to the Comptroller, who disburses them to the creditors of the insolvent bank. Under section 5234 of the Revised Statutes, when the Receiver deems it desirable to sell or compound bad or doubtful debts, or to sell the real and personal property of the bank, it devolves upon him to procure " the order of a court of record of competent juris- "diction," but the funds arising therefrom are disbursed by the Comptroller.

We are dealing, however, with an officer of the United States, compelled by its laws to perform his official duty in a certain way. The moment, therefore, we find that an attachment issued out of the State court will prevent such performance, we demonstrate our proposition, that such attachment, because of such consequence, is illegal.

In Bank of Bethel *vs.* Pahquioque Bank, 14 Wallace, 401, this court determined that the claims of creditors might be established, either by proof before the Comptroller, or by suit against the association in any court of competent jurisdiction; but it implied that they could only be paid through the Comptroller. If the proceedings appealed from in the State court be sustained, the claims of creditors of the bank must be paid, in case of an attachment by a State court, by the Receiver.

In Hitz *vs.* Jenks, 123 U. S., 298, it was held that a Receiver of a National bank, appointed by the Comptroller of the Currency, is not accountable in equity to the owner of real estate for rents thereof received by him as such Receiver and paid by him into the Treasury of the United States, subject to the disposition of the Comptroller of the Currency under section 5234 of the Revised Statutes.

We submit that this decision establishes the principle for which we contend, viz., the immunity of the Receiver against any proceedings having for their purpose the taking out of his hands any moneys or property received by him in his official capacity.

This principle was acted upon by the Circuit Court of Appeals of the Fifth Circuit in the case of Merrill *vs.* First National Bank of Jacksonville, 75 Fed. Rep., 148, where it was held that in a suit against a Receiver of an insolvent National bank to establish the claim of a creditor and his

right to a dividend, the decree should not direct the payment of the dividend by the Receiver, since the assets of such bank are, under the statutes, entirely within the control and disposition of the Comptroller of the Currency, but that said decree should direct that the claim of the creditor, as established, should be certified to the Comptroller, to be paid in due course of administration.

In the present case there could not even be a direction of a certification to the Comptroller, because the only basis of the attaching creditor's right, is a service of his attachment upon a person possessed of funds belonging to the judgment debtor.

In the case of Wolf *vs.* McNulta, decided by the Supreme Court of Illinois in 1899, 52 N. E. Reporter, 896, that court recognized its inability to make any order upon a Receiver to pay over the funds of a National bank, and contented itself with the entry of an order requiring him to certify a claim against the bank to the Comptroller of the Currency. In that case the claim was directly against the bank and was established by the judgment. In our case, and the attaching creditor had no claim against the bank; but, by virtue of his levy upon funds supposed to be in the hands of the Receiver, belonging to the bank, the latter was brought into the State court. Inasmuch as he had no such funds, the State court acquired no jurisdiction.

We do not regard as being subject to doubt, the point we make, viz., that the Receiver, who has no funds with which he can pay the judgment debtor, can be made to pay anything to an attaching creditor of such debtor.

Can it be said, however, that in such event the attachment works no harm, and that it is not necessary to order its vacation?

We have shown that it does work harm. It entails upon the Receiver trouble and expense, in appearing in the State court and there protecting himself by counsel.

The attaching creditor was bound to know that the Receiver could not have funds which he could pay to his debtor; and that it was the duty of the Receiver to pay over

all that came into his hands into the Treasury of the United States. There could be no other result of his action than to subject the Receiver to useless trouble and expense. It is the duty of the courts of the United States to protect its officers against such action, and to protect those interested in the enforcement of its laws against useless expense.

JOHN G. JOHNSON,
Of Counsel for Plaintiff in Error.

No. 219. October Term, 1899.

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Brief of Stillwell for D. C.

IN THE

Supreme Court of the United States.

Filed April 10, 1900.

George H. Earle, Jr., Receiver of the Chestnut Street National Bank of Philadelphia, Pennsylvania, Plaintiff in Error,

vs.

William Conway, Defendant in Error.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

BRIEF OF DEFENDANT IN ERROR.

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BRIEF OF ARGUMENT FOR THE DEFENDANT IN ERROR.

Although the plaintiff in error has, with much ingenuity, divided his specification of error into a number of heads and sub-heads, there is really but one question in this case, and that is, Has a judgment creditor the right to issue an attachment execution out of a State court in order to bind property or money belonging to the defendant in the possession of a Receiver for a national banking association, or has such right been taken away by the exception in section 5242 of the Revised Statutes of the United States?

William Conway, the defendant in error, having obtained a judgment in the Court of Common Pleas, for Philadelphia County, Pennsylvania, against John G. Schall, issued an attachment execution (also called an attachment *sur* judgment) thereon against the defendant, and summoned the Receiver of the Chestnut Street National Bank and the bank itself as garnishees.

The question above stated suggests two inquiries: first, What was the purpose of the exception in section 5242? And, second, Is the attachment in question within the purpose of the exception?

What was the purpose of the exception in section 5242?

Section 5242 of the Revised Statutes of the United States, which is the bone of contention here, is as follows: "All transfers of the notes, bonds, bills of exchange, or other evidence of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use or for the use of any of its shareholders or creditors; and all payments of money to either made after the commission of an

act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void, and no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county or municipal court."

There is a clear, comprehensive and cohesive scheme, developed by the above section, designed to prevent a national banking association from preferring any one of its creditors over another, by the transfer of its assets, evidences of debt owing to it, deposits to its credit, assignments of its securities, or by deposits or payments of money belonging to it, with a view to a preference of one creditor over another, and all such transfers and payments are declared to be void. Then following in the same line, the section declares that no attachment or execution shall be issued *against such association or its property* before final judgment. The purpose of this section seems to be so plain as to be beyond question. It is designed to protect all creditors of the bank. It certainly never was intended to be used, as the plaintiff in error contends in this case, to protect the bank's creditors from the reach of *their* creditors.

The original Banking Act did not contain the prohibition in reference to attachments and injunctions in State courts, but that clause first appeared in the Act of March 3d, 1873, as a new proviso added to section 57 of the Act of June 3d, 1864. As the Revised Statutes were first adopted, the proviso of section 57, which related specially to proceedings to enjoin the comptroller, was re-enacted as section 736, but all the rest of the original section was left out. That omission was, however, supplied by the Act of February 18th, 1875, which reenacted it as part of section 5198, putting it at the end of that section, as it originally stood in the revision. Mr. Chief Justice Waite, in delivering the opinion in the case of the Pacific National Bank *vs.* Mixter, 124 U. S., page 721, says: "The fact that the amendment of 1873, in relation to attach-

ment and injunctions in State courts was made a part of section 5242, shows the opinion of the revisers and of Congress, that it was germane to the other provisions incorporated in that section, and was intended as an aid to the enforcement of the principle of equality among the creditors of an insolvent bank."

The plaintiff in error lays great stress upon the case of Bank *vs.* Mixter (*supra*), and on page 16 of his brief says that the difference between it and the case at bar "is in form and not in substance;" but just how he derives any comfort from that case, or can see any resemblance in it to the case at bar, is a mystery to us. In that case an attachment was issued under a statute of Massachusetts *by a creditor of a national banking association against the property of the bank* before a judgment had been obtained against the latter. The statute provided, that "all real and personal estate liable to be taken in execution * * * may be attached upon the original writ in any action in which debt or damages are recoverable, and may be held as security to satisfy such judgment as the plaintiff may recover;" and the court held that such attachment was void under the exception in section 5242 of the Revised Statutes of the United States. This view is in harmony with the evident purpose of the national banking law, which was to protect, first, national bank notes, and after that all the creditors of the national bank equally.

In National Security Bank *vs.* Butler, 129 U. S., 223, it appeared that the Pacific National Bank was insolvent, and had decided to close its doors and go into liquidation. At that time it owed the Security Bank $10,000, for which the latter held a certificate of deposit. The Pacific Bank, after its insolvency, and just before it closed its doors, transferred to the Security Bank certain checks, drafts, &c., as a deposit, for which the latter gave a certificate of deposit; and the Security Bank, in a suit upon the last-mentioned certificate of deposit, claimed to set off the former certificate against it. The court held that "it is sufficient, under section 5242 of the Revised Statutes, to invalidate such a transfer, that it is made in contemplation of insolvency, and either with a view to prevent the

application of the assets of the bank in the manner prescribed by chapter 4, of title 62, of the Revised Statutes, or with a view to the preference of one creditor to another. Certainly the transfer in question was made in contemplation of insolvency; made, as it was, after the directors had voted that the bank should go into liquidation, and should be closed to business, and that a receiver should be appointed; and it was made with a view, on the part of the Pacific Bank, and of its cashier, who represented it and acted for it in this transfer of its assets, to prevent the application of its assets in the manner prescribed by such chapter 4, of title 62, and with a view to prefer the Security Bank to other creditors. The transaction, if allowed to stand, could result in nothing else. The statute made it void, although there was no such view on the part of the Security Bank in receiving the transfer of the assets; and although there was no knowledge or suspicion at that time on the part of the Security Bank that the Pacific Bank was insolvent, or contemplated insolvency, or was not doing business, or that its directors had voted to close it, or that application was to be made for a receiver; and although the transfer took place before the application was actually made to the comptroller for the appointment of a receiver."

In National Bank *vs.* Colby (88 W. S. R., 613), Mr. Justice Field, in delivering the opinion of the court, after citing the provisions of the Act of Congress in regard to the insolvency of national banking associations, said: "There is in these provisions a clear manifestation of a design on the part of Congress, *first*, to secure the Government for the payment of the notes, not only by requiring, in advance of their issue, a deposit of bonds of the United States, but by giving to the Government a first lien for any deficiency that may arise on all the assets subsequently acquired by the insolvent bank; and, *second*, to secure the assets of the bank for a ratable distribution among its general creditors.

"This design would be defeated if a preference in the application of the assets could be obtained by adversary proceedings. The priority of the United States, and the ratable dis-

tribution among the general creditors so studiously provided for in the Act, would in that case be lost."

To the same effect is the decision in Robinson *vs.* Bank, 81 New York, 385.

Apparently considerable confusion exists in the mind of the plaintiff in error as to what mesne process is. He seems to think that the attachment execution in the case at bar is mesne process; but, as we expect to show hereafter, it is not mesne but final process, so far as its effect as an attachment of property is concerned, and so far as it affects the garnishee personally, it is original process in the nature of a summons.

The plaintiff in error cites the following cases in support of his claim that the attachment in the present case is mesne process; but all of these cases were commenced by *attachment* (or injunctions having the effect of an attachment) *of the property of a national banking association by mesne process at the suit of creditors of the bank before any judgment had been obtained*, which is as different from the process issued in the present case as may well be. These cases the defendant in error begs to cite as sustaining his contention—that the prohibition contained in section 5242 of the Revised Statutes of the United States does not apply to an attachment such as was issued in this case, but only applies to such attachment, &c., as would give one creditor of a bank a preference over the other creditors; Pacific National Bank *vs.* Mixter, 124 U. S., 721; Garner *vs.* Second National Bank, 66 Fed. Rep., 369; Central National Bank *vs.* Richland, 52 How. Pr., 136; Rohner *vs.* First National Bank, 14 Hunn, 126; Planters' Loan and Savings Bank *vs.* Berry, 91 Georgia, 264; Safford *vs.* First National Bank, 17 Atlantic Reporter, 748; Freeman *vs.* National Bank of the Republic, 35 N. E. Rep., 865, 866; Raynor *vs.* Pacific National Bank, 93 N. Y., 371; Cadle *vs.* Tracy, 11 Blatch., 101; Chesapeake Bank *vs.* Bank, 40 Maryland, 269, and National Bank *vs.* La Due, 39 Maine, 415.

In Corn Exchange Bank *vs.* Blye, 101 N. Y., 303, section 5242 was considered. Certain securities were deposited with

the Middletown National Bank as collateral security for a draft, which latter had been sent to the bank for collection. The draft was not paid, and the owner caused to be issued a requisition, in the nature of a writ of replevin, against the Receiver of the bank to recover possession of the securities. The court said: "The sole question in this case is whether section 5242 of the United States Revised Statutes prohibits the requisition issued to the sheriff and protects the Receiver in his possession. The Bank of Middletown became insolvent, and the defendant was appointed Receiver under the federal law. That appointment vested in him all the assets of the bank, to be converted into money and distributed among the creditors. The object sought to be accomplished is the distribution of these assets fairly and without preferences, *and that has been held to be the only aim of the section in question.*" And the court sustained the requisition.

The defendant in error has been unable to find a case, and believes that none exists, where the court has held that an attachment issued against the property of a judgment debtor in the hands of a national banking association was rendered void by section 5242.

Is the attachment in question within the purpose of the exception in section 5242?

To answer this question we are necessarily led to a consideration of the nature and effect of the attachment issued in this case.

The right to issue the attachment exists by virtue of certain Acts of Assembly of the State of Pennsylvania, which are set out on pages 38, 39, and 40 of the paper book of the plaintiff in error, and are hereafter referred to. These Acts provide a method by which a judgment against a defendant may be levied of the effects of the defendant in the garnishee's hands. The record of this case shows that nothing else was attempted. There is no pretense disclosed by the record that any of the bank's property is bound or attempted to be bound by the attachment, but merely the property of Schall, the defendant in the judgment.

The Act of June 16th, 1836, section 35 (Pepper & Lewis, Digest, page 1939), is as follows: "In the case of a debt due the defendant, or of a deposit of money made by him, or of goods or chattels pawned, pledged or demised, as aforesaid, the same may be attached and levied in satisfaction of the judgment in the manner allowed in the case of foreign attachment, but in such case a clause in the nature of a *scire facias* against a garnishee in foreign attachment shall be inserted in such writ of attachment requiring such debtor, depositary, bailee, pawnee, or person holding by demise as aforesaid, to appear at the next term of court, or at such other times as the court from which such process may issue shall appoint, to *show cause why such judgment shall not be levied of the effects of the defendant in his hands.*"

The effect of such an attachment is stated in section 37 of the same Act (Pepper & Lewis' Digest, page 1942), as follows: "From and after the service of such writ all stock belonging to the defendant in the corporation upon which services shall be made, and all debts and all *deposits of money and all other effects belonging or due to the defendant,* by the person or corporation upon which service shall be so made, shall remain attached in the hands of such person or corporation in the manner heretofore practiced and allowed in the case of foreign attachment."

The *status* of the garnishee named in an attachment execution has been clearly defined by decisions of the courts of Pennsylvania. In Patton *vs.* Wilson, in 34 Penna. St. Repts., 299, it was decided that an attaching creditor stands in the shoes of his debtor; and any equities that could be set up against the latter are equally available against the former.

In Myers *vs.* Baltzell, 37 Penna. St. Rep., 491, it was held that the attachment in no way interferes with any right of the garnishee, but leaves to him all the rights of set-off, defalcation, or defense incident to the relation of the parties at the time of service. Citations to the same effect could be multiplied almost indefinitely.

Let us examine the writ of attachment, which will be found on page 14 of the printed record. It shows, as clearly as language can make it, that the attachment is directed against Schall, the defendant in the judgment, and not against the bank. The name of the bank appears merely as a custodian, or possible custodian, of property belonging to the defendant, or as a debtor owing money to him. The clause directed to the bank is in the nature of a summons requiring the garnishee of the bank to show cause why the judgment against the defendant should not be levied of the defendant's property or deposits in the garnishee's hands. The wording of the writ is in no sense ambiguous, and, it seems to the defendant in error, ought to settle any doubt, if any exists, that the attachment is not against the garnishee, but is against the defendant, Schall's, property. Referring to the writ, we find these words: "To the sheriff," &c. * * * "We command you that you levy upon and attach the goods * * * ," &c., "of John G. Schall, defendant, in satisfaction of a certain judgment, * * * and also that * * * you make known to the said defendant, and to the Chestnut Street National Bank, and George H. Earle, Jr., Receiver, * * * and all other persons in whose hands or possession the said goods * * * &c., may be attached as garnishee, that they may appear * * * to show * * * why the said judgment * * * should not be *levied of the effects of the said defendant in the hands of said garnishee.*"

The Act of Congress does not say that no writ bearing the name "attachment" shall be issued, but merely uses the word "attachment" to designate a writ, well known to the law, under which property or a person is attached or taken possession of, either in fact or by operation of law, to satisfy a demand. There can be no pretense, it seems to the defendant in error, that the writ in this case attaches anything belonging to the bank, or that it attaches the bank, its officers, or Receiver in person. The Act of Assembly above quoted provides for no such writ, neither does the present writ purport to have such operation. Both the Act and the writ provide for the issuing

of an attachment against the goods of Schall, the judgment debtor, and against these alone.

The nature and effect of the writ in the case at bar may be further disclosed by considering the character of the judgment that may be taken against the garnishee. The Act of 1836, Sect. 38 (Pepper & Lewis' Digest, page 1943), declares that the judgment shall be as follows:

"If judgment shall be given for the plaintiff in such attachment, it will be lawful for him to have execution thereof, as follows, to wit:—

"I. If the property attached be stock in a corporation, as aforesaid, the execution shall be by writ of *fieri facias against the original defendant*, by virtue of which such stock, or so much thereof as shall be necessary to satisfy the judgment and costs, may be sold by the sheriff, as in other cases.

"II. If the property attached be a deposit of money or a debt due, as aforesaid, execution shall be had in the manner allowed in the case of effects in the hands of a garnishee in foreign attachment." And how is that? Let us again turn to Pepper & Lewis' Digest, page 2161, title, "Foreign Attachment," and we find that the Act of June 13th authorizes the following proceedings: "The goods and effects of the *defendant* in the attachment in the hands of the garnishee, shall, after such service, be bound by such writ."

The 54th section of the same Act directs, that after judgment is entered against the defendant the plaintiff may have a writ of *scire facias* against the garnishee, commanding him to show cause, if any he has, why the plaintiff should not have execution of his judgment *of the estate and effects of the defendant* attached as aforesaid *in his hands.* The plaintiff then, by section 55, is empowered to exhibit interrogatories to the garnishee touching the estate and effects of the defendant in his possession, which interrogatories the garnishee, by section 56, is required to answer. (See Pepper & Lewis' Digest, pages 2167, 2168, 2169.)

Sections 59 and 60 of said Act (Pepper & Lewis' Digest, page 2170) are as follows:—

"After a verdict for the plaintiff on any *scire facias*, as aforesaid, it shall be lawful for him to have execution of his judgment in the attachment to be *levied of the goods and effects so found in the hands of the garnishee*, or of so much of them as shall be sufficient to satisfy his demand, together with legal costs of suit and charges as aforesaid.

"The plaintiff may also, at the same time, have execution against the garnishee upon the judgment obtained against him on the *scire facias, as in the case of a judgment against him for his proper debt, if the garnishee shall neglect or refuse upon the lawful demand of the proper officers to produce and deliver the goods and effects of the defendant as aforesaid or to pay the debt or duty attached if the same shall be due and payable.*"

From the foregoing it would seem to be a waste of time to argue the question as to whether the attachment is against the bank or its property. The only possible way that either could be liable to the plaintiff in the attachment would be after the court had entered judgment against the garnishee that there *was* property or money in its hands belonging to the defendant, and then for the garnishee to fail to produce the property or money in satisfaction of the judgment. The result in such case would be, that the garnishee's own property would be liable for the judgment, just as any defendant's propety is liable for a common-law judgment entered against him.

There is a provision in the exception in section 5242 which has been lost sight of by the plaintiff in error, and that is, that no execution, &c., should issue against the bank before "final judgment in any suit," &c. It cannot be asserted in this case that there is no final judgment, for a final judgment has been obtained against Schall, from which no writ of error or appeal has been taken.

It seems impossible to escape the conclusion that the sole care of Congress, in making the exception in the section above mentioned, was to protect the assets and property of the bank for its creditors; and for that purpose directed that no person

by an attachment, or anything in the nature thereof, issued before obtaining a final judgment against the bank, could acquire a preference over other creditors, equally meritorious but not so fortunate as to acquire an earlier lien. It is just such a provision as all the bankruptcy laws contain ; and as insolvent national banking associations cannot go into bankruptcy, but must have their affairs settled and assets distributed through the mediumship of the comptroller, and a receiver appointed by him, all preferences and inequalities, as between creditors of the same class, are sought to be prevented by the section in question.

Then again, the orderly and logical settlement of the affairs of an insolvent national banking association, and the distribution of its assets among its creditors, ought not to be interfered with, whilst a question as to the priority of a lien upon, or attachment against, its assets is being litigated in a State court; this the National Banking Act clearly intends to prevent. But the attachment issued in the case at bar, could not in any possible way interfere with the calling in and sale of the assets of the bank, and the distribution of the proceeds among the bank's creditors and stockholders, because there is no question that the only effect of the attachment in this case is to prevent the Receiver from paying to Schall the amount of his dividend, and, instead, requires the Receiver to pay it to the plaintiff in the execution in satisfaction of his judgment against Schall. That Schall should get the dividend, and not his creditor, is certainly not within the contemplation of the Act. It would be much more reasonable to suppose that Congress intended that Schall's dividend should be used to pay his debts rather than to be so applied, with the aid of the Receiver, that Schall's creditors shall be deprived of all opportunity of reaching it. Yet if the construction contended for by the plaintiff in error is correct, the latter result would be reached ; for how, then, could a creditor of John G. Schall, after having obtained a judgment against him, reach any property of his in the possession of a national banking association? If the Act means that no execution or attachment shall be *issued* against the property of Schall in the possession of the

bank until a judgment is obtained against the latter, then the creditor would be without remedy; for there is no way, under the law of Pennsylvania, by which a creditor can reach a debt due to his debtor by a third person except by an attachment. Conway cannot sue the bank, because there is no privity of contract between him and the bank. The bank owes Conway nothing; therefore, he could not recover such a judgment against it as the plaintiff in error claims he would be obliged, in some way, to get before he issued an attachment. The argument of the plaintiff in error leads to the conclusion that in Pennsylvania a debt due to a man by a national banking association is absolutely safe from the reach of his creditors. But we think such a construction of the Act is clearly at variance with its meaning and purpose.

J. C. STILLWELL,
Attorney for Defendant in Error.

In the

Supreme Court of the United States

(Record No. 17,307.)

October Term, 1899. No. 219.

George H. Earle, Jr., Receiver of The Chestnut Street National Bank,

Plaintiff in Error,

v.

William Conway,

Defendant in Error.

Supplemental Brief on Behalf of the Defendant in Error.

In the original brief of the plaintiff in error, the only question discussed was whether or not the attachment issued in this case was in violation of the exception in Section 5242 of the Revised Statutes of the United States; but in his supplemental brief the plaintiff in error raises and discusses an entirely different question, and that is, whether or not the attachment being against a receiver of a national banking association can be sustained on any ground. He bases his argument on three points:

1. That the receiver was obliged, under the provisions of the Act of Congress in reference to such associations, to transfer the assets into the treasury of the United States, subject to the

order of the Comptroller of the Currency, and therefore, he had nothing in his hands which could be bound by our attachment.

2. If such an attachment is sustained, it will impose upon the receiver a great hardship, namely:—that of employing counsel to appear in the proceeding and answer the plaintiff's claim; and

3. That it will also subject the funds of the association to the expense of paying for such services.

I.

It must be admitted that the Comptroller of the Currency exercises judicial functions in the liquidation of the affairs of national banking associations. He is authorized by Section 5234 of the Revised Statutes, on becoming satisfied that any association has refused to pay its circulating notes, etc., to appoint a receiver, and require a bond from him; whereupon it is the receiver's duty to take possession of the books and assets of the association, collect its debts, and, upon order of a court of competent jurisdiction, sell its real and personal property, and if necessary, enforce the individual liability of its stockholders. He must pay all moneys realized into the treasury of the United States, subject to the order of the Comptroller, and make report to the latter of all his acts. It is then the duty of the Comptroller, after first protecting the claims of the United States, to declare dividends on all such claims as may have been "proved to his satisfaction, or adjudicated in a court of competent jurisdiction."

By section 5237, if the association denies that it is in default it may apply to the circuit or district court for an injunction to restrain the receiver from proceeding.

It is clear that in the appointment of the receiver, accepting proof of claims and declaring dividends the Comptroller

exercises judicial functions; but it is impossible for him to proceed without the co-operation of the receiver, for it is the receiver's duty, and not the Comptroller's, to take possession of and convert the assets, contest disputed claims, and perform other duties necessary for the winding up of the insolvent association.

By section 3 of the act of Congress of August 13, 1888, U. S. Stat. at Large, p. 436–7, it is provided that "Every receiver or manager of any property, appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same may be necessary to the ends of justice."

The plaintiff in error says that even if a Treasurer of the United States could be attached, we have not served our attachment upon him. That is quite true, we have not served the comptroller, who, as we believe we have shown, is a judicial officer. Nor can we. Nor could we serve a judge, or a court, in a proceeding against a receiver appointed by it. It is enough to serve the receiver, and having established in such suit, our right to the dividend, we would expect the court to make a proper distribution of the fund in its control.

What difference is there between the present case and that of a receiver appointed by a court of chancery? There the receiver is the agent of the court. The moneys he collects are in the custody of the court. The act of Congress when it requires the receiver to pay the money into the United States Treasury, subject to the order of the comptroller, is but designating the depository in which the funds shall be kept. For the purposes of this case, the Treasury of the United States is the bank, and the funds of the insolvent association are earmarked and set aside, subject to the comptroller's order; and he makes his order when claims are "proved to his satisfaction, or adjudicated in a court of competent jurisdiction."

The plaintiff in error cites *Re Chetwood*, 165 U. S. 443, as sustaining his contention that a receiver appointed by the comptroller is different from one appointed by judicial authority; but that case merely decides that a receiver is under the control of the officer appointing him, and does not become an officer of a court to which he applies for the purpose of selling personal property of the bank.

It was decided in *Conshohocken Tube Co.* v. *Equipment Co.* defendant and the receivers of the Philadelphia & Reading R. R. Co., garnishees, 167 Penn St. Rep. 592, that money in the hands of a receiver was the subject of an attachment execution.

An attachment execution against a corporation in the hands of a receiver is properly served upon the receiver, and such service entitled the plaintiff in the attachment to the dividend in the receiver's hands when declared.

Merchants' National Bank v. *Binder*, 6 Penna. Dist. Repts. 633.

In *McNulta* v. *Lockridge*, 141 U. S. 327, it was said that the proper way to sue a corporation is to sue it by its name in the hands or possession of the receiver, but the writ should be served on the receiver, because he is the representative of the corporation in dealing with its creditors. Actions to recover its property must be brought in its name for the use of its receiver.

Yeager v. *Wallace*, 44 Pa. S. Rep. 294.

A receiver may maintain action in his own name on a contract with him.

Singerly v. *Fox*, 75 Pa. 112.

Therefore, we submit, that the attachment in this case, having been served upon the receiver, binds the Comptroller as much as he could be bound in any case.

Strictly speaking, there is no way to get the money of a national banking association out of the treasury of the United States, except by an Act of Congress or through the Court of Claims. The law requires the receiver to collect the

funds and pay them into the treasury of the United States, subject to the order of the Comptroller of the Currency. How the latter can be compelled to pay over these moneys to the creditors seems to be in doubt. The law requires him to pay these moneys "in due course of administration," and we should assume that he will comply with the law. But any practical difficulty that may exist by reason of the peculiar conditions which surround the settlement of the affairs of insolvent national banking associations is solved by moulding the decree or judgment in such a way as will do justice to the parties, without, in so many words, giving a decree or judgment against the comptroller or a right of execution thereon against him.

In *Case* v. *Bank*, 100 U. S. 446, a suit against a receiver of a national bank, the judgment was that the receiver "do pay the same or certify the same to the Comptroller to be paid in due course of administration."

In *Merritt* v. *First National Bank*, 75 Fed. Rep., 148, it was decided that in a suit against a receiver of an insolvent bank to establish the claim of a creditor and his right to a dividend, the decree should not direct the payment of the dividend by the receiver, since the assets of such bank are under the statutes entirely within the control and disposition of the Comptroller of the currency, but such decree should direct that the claim of the creditor, as established, be certified to the Comptroller, to be paid in due course of administration.

In *Richardson* v. *Louisville Banking Company*, 94 Fed. Rep. 442, which was a suit against a Receiver of a national banking association, objection was made to the form of the decree because it commanded the receiver to pay over to the plaintiff a sum of money within ten days, when as a matter of fact, in accordance with the law, the receiver had not in his custody the funds in question, but the same were in the hands of the Comptroller of Currency. It was argued that by the decree, as rendered, it might appear that the receiver would

be held in contempt for not paying over moneys which were not in his control. The Court, however, met this objection by amending the decree so as to direct that the plaintiff should recover from the receiver a sum of money within thirty days, or that he should, within said time, certify the decree to the Comptroller of the Currency.

Suppose a bank has improperly converted the property of another. The Receiver of the bank having transferred its assets to the Comptroller, cannot be held personally liable for that which he has not in his possession. What remedy has the creditor except to sue the receiver and get a judgment, that the latter certify the same to the Comptroller of the Currency Having complied with such decree, by certifying, the judgment to the Comptroller, the receiver has performed his whole duty, and the creditor must then look to the Comptroller. We submit that that case is substantially similar to our own, for we are seeking Schall's property which ought to be in the possession of the bank or its receiver, but is not, he having transferred it, as we assume, to the Comptroller.

But in assuming that all the assets are transferred are we not assuming too much? How do we know that the Receiver has turned over all the assets of the bank to the Comptroller? The act of Congress, by no means, makes such an inference a necessary one. By the Act of June 30, 1876; Part 3 of the Revised Statutes, p. 107, and amendments threof provision is made for the transfer of the assets of a national bank, which has paid its creditors in full, still remaining in the possession of the Comptroller *and Receiver* or either of them, to an agent appointed by the stockholders of the bank, for the purpose of reorganization.

If the assets were wholly in the custody of the Comptroller by operation of law, what need was there for the Receiver to join in the reconveyance to the bank's agent?

The above provisions show the intimate relations existing between the Comptroller and the Receiver. He stands to represent the bank and the Comptroller in any controversies

between them and those having claims against the bank. It is against the receiver and not the Comptroller that suits must be brought. When we served our attachment on the receiver we bound both the Comptroller and the bank so far as the distribution of its assets was concerned; and when we have obtained judgment against the receiver, we will have a claim to a dividend which "has been adjudicated in a Court of competent jurisdiction."

It is submitted that the difficulty, if any, that exists in the case of an attachment execution issued against the funds of a depositor in the hands of the receiver by reason of the fact, if such is the fact, that the assets of the bank are, by operation of law vested in the Comptroller, is no greater than that which exists in the case of a claim of an ordinary depositor against the bank, or its receiver, for his share of the dividend. He does not sue the Comptroller, but the receiver. The judgment that he recovers against the receiver does not give him any right against the receiver personally, but merely establishes a claim, which it is the duty of the receiver to certify to the Comptroller, and it will be the duty of the Comptroller to pay in due course of administration. But, it is suggested, suppose the Comptroller does not pay, what will be your remedy then? We might answer "Sufficient unto the day is the evil thereof." But if such a complication should arise, there is no doubt that the Comptroller would be personally liable in another suit, or the claim could be prosecuted through the Court of Claims.

All that the defendant in error claims or contends for here, is, that by issuing his attachment he stands in the shoes of Schall, the judgment debtor, and has succeeded to the latter's right to proceed against the receiver, the Comptroller, or whoever it may be that is liable for the fund. The issuing of the attachment in this case, merely acted as an assignment of so much of Schall's right against the bank as may be necessary to meet Conway's demand against him. It follows as a logical conclusion that if Schall had a right to

establish his claim to a portion of the fund in the Comptroller's custody, through a suit against the receiver, then Conway, by issuing his attachment, has the same right. If Conway had no right to proceed because the fund was not in the receiver's control, then Schall, for the same reason, would have no such right.

The plaintiff in error has cited the case of *Hicks* v. *Jenks*, 123 U. S. 297, as establishing the proposition that a receiver of a national bank is not accountable in equity to the owner of real estate for rents thereof received by him as such receiver, and paid by him into the treasury of the United States. But he omitted to mention that these rents had not only been collected and paid to the Comptroller, but also distributed by him as part of the assets of the bank. We never contended that the receiver would, in any case, be liable for doing his duty, viz.: paying the moneys which came into his hands into the treasury of the United States, nor be liable for the act of the Comptroller in making distribution of the funds in his hands. Further than that the case does not go.

II.

The second point urged by the plaintiff in his supplemental brief is, that if this attachment is sustained it will impose a hardship upon the receiver by compelling him to employ counsel to defend such claims. As to this, all that need be answered is, that such a hardship is no greater than that which arises in every case where a suit is brought against a Receiver. Of course a receiver cannot admit every claim that is presented; and if any dispute arises, it is his duty to see that the claim is duly litigated to final judgment. The hardship in the one case is no greater than in the other. And even if the payment of the claims of attaching creditors is an additional burden, is that any reason why the claim of the creditor, however just it may be, should be thrown out of Court, and the money which ought to go to pay his debt be

given to his debtor free from any possible claim of his? It seems to us, we respectfully submit, that to state this question is to answer it in the negative.

III.

The third contention is, that if this attachment is sustained, the expense of litigating the question will fall upon the assigned estate. This point is entirely without merit, for the reason, that under the law of the State of Pennsylvania, and we believe under the law of every State where similar attachments are permitted, there is a provision which authorizes the Court, in giving judgment against a garnishee in an attachment, such as in the present case, to award, first to the garnishee, a reasonable attorney's fee, so that he will not be at any expense by reason of the attachment.

The Act of April 22, 1863 (P. L. 527 Section 1) (P. & L. Dig. p. 1947) is as follows: "Where in an attachment execution or *scire facias* on foreign attachment, issued out of any Court of Record in this State, the garnishee, after issue joined therein, shall be found to have in his possession or control no real or personal property of the defendant, nor to owe him any debt, other than such property or debts as shall have been already admitted by the plea or answers of the garnishee, or in case, without going to trial the plaintiff shall take judgment against the garnishee for what shall be so admitted in his plea or answer, then, and in either such case, the garnishee shall be entitled, in addition to the costs already allowed by law, to a reasonable counsel fee out of the property in his or their hands, to be determined and taxed, in case of dispute, by the Court, or by some person or persons appointed for that purpose."

By 1st section of the act of June 11, 1885, P. L. 107, Penna. (Pepper & Lewis Digest, p. 2170) garnishees having no assets in their hands are allowed a counsel fee of ten dol-

lars, in addition to their record costs, which must be paid by the plaintiff.

By the 1st section of the Act of April 29, 1891, P. L. 35, Penna. (Pepper & Lewis Dig., p. 2166) in every case in which a garnishee appears by attorney a fee of ten dollars is allowed in addition to record costs.

* * * * *

The Act of Congress of August 13, 1888, section 4, declares, "That all national banking associations . . . shall, for the purposes of all actions by or against them, . . . be deemed citizens of the States in which they are respectively located; and in such cases, the Circuit and Districts Courts shall not have jurisdiction other than as they would have in cases between individual citizens of the same State."

Section 5198 of the Revised Statutes is as follows: "Suits, actions, and proceedings against any association under this title may be had in any District, Circuit or Territorial Court of the United States, held within the district in which the association may be established, or in any State, County or Municipal Court in the county or state in which the said association is located, having jurisdiction in similar cases."

The above acts, and sections 915 and 916 of the Revised Statutes, which provide that the proceedings in the Circuit and District Courts of the United States, by attachment and other process shall be the same as that established by the laws of the States within their respective districts, shows a clear intention in the legislative mind to subject national banking associations, and those dealing with them, to the same remedies and proceedings, as between citizens of the same States, as are given by their respective States. The remedy by an attachment execution for the collection of claims and debts due to the defendant, is a most important one, and to take it away would be, not only aiding the judgment debtor to defraud his creditors, but would be a blow dealt at the administration

of justice as now established. The Act of Congress should not be so construed as to protect one class of creditors at the expense of another class. The tendency of modern times is not to protect a man from his creditors, but to place his property within the reach of all lawful claims against him.

We must respectfully submit that expediency is a very poor reason for advocating such a radical change. We have shown that Conway by his attachment execution stands in Schall's shoes, just as though he had an assignment of his claim, and that the difficulty of recovering against the receiver in his case is no greater than it would have been had Schall himself sought to enforce his claim. We have also shown that it would entail no real hardship upon the receiver, and no expense upon the assigned estate.

J. C. STILLWELL,
Attorney for Defendant-in-Error.

EARLE *v.* CONWAY.

ERROR TO THE SUPREME COURT OF PENNSYLVANIA

No. 219. Argued April 11, 1900. — Decided May 14, 1900.

A receiver of a National Bank may be notified, by service upon him of an attachment issued from a state court, of the nature and extent of the interest sought to be acquired by the plaintiff in the attachment in the assets in his custody; but, for reasons stated in *Earle* v. *Pennsylvania*, *ante*, 449, such an attachment cannot create any lien upon specific assets of the bank in the hands of the receiver, nor disturb his custody of those assets, nor prevent him from paying to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, all moneys coming to his hands, or realized by him as receiver from the sale of the property and assets of the bank.

THE case is stated in the opinion.

Mr. John G. Johnson and *Mr. Asa W. Waters* for plaintiff in error. *Mr. W. H. Addicks* was on *Mr. Waters'* brief.

Mr. James C. Stillwell for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

This case differs somewhat in its facts from those in *Earle* v. *Pennsylvania*, *ante*, 449. It appears that on February 24, 1898, the appellee Conway, in an action of assumpsit in the Court of Common Pleas of the county of Philadelphia, ob-

tained a judgment against one John G. Schall for $1012.43. Upon that judgment a writ of attachment was issued and served May 24 and 25, 1898, upon the Chestnut Street National Bank of Philadelphia and upon Earle, receiver, as garnishees—the receiver having been appointed January 29, 1898—commanding them to show cause on a day named why the judgment against Schall, with costs of writ, should not be levied of his effects in their hands.

The bank and the receiver entered their appearance as defendants and garnishees "for the purpose only of moving said court to set aside the writ of summons in attachment sur-judgment against him and them, and to dismiss and vacate all proceedings in attachment therein against him or them." That motion was made upon the ground that the Court of Common Pleas was without jurisdiction under section 5242 of the Revised Statutes of the United States. The motion was denied, and the order of the Court of Common Pleas was affirmed by the Supreme Court of Pennsylvania.

We are of opinion that it was not error to deny the motion to set aside the service of the writ of attachment on the bank and the receiver. No sound reason can be given why the receiver of a national bank may not be notified by service upon him of an attachment issued from a state court of the nature and extent of the interest asserted or sought to be acquired by the plaintiff in the attachment in the assets in his custody. But for the reasons stated in *Earle* v. *Pennsylvania*, such an attachment cannot create any lien upon specific assets of the bank in the hands of the receiver, nor disturb his custody of those assets, nor prevent him from paying to the Treasurer of the United States, subject to the order of the Comptroller of the Currency, all moneys coming to his hands or realized by him as receiver from the sale of the property and assets of the bank. After the service of the attachment upon the receiver it became his duty to report the facts to the Comptroller, and it then became the duty of the latter to hold any funds coming to his hands through the Treasurer of the United States as the proceeds of the sale of the bank's assets subject to any interest which the plaintiff may have legally acquired therein as against

his debtor under the attachment issued on the judgment in his favor in the state court.

As the judgment of the Supreme Court of Pennsylvania goes no further than to sustain the right of the plaintiff to have the attachment served upon the receiver as garnishee, it is

Affirmed.

Mr. Justice White dissented.